

105TH CONGRESS
1ST SESSION

H. R. 2750

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 1997

Mr. BARCIA (for himself and Mr. DOOLEY of California) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Superfund Cleanup
5 Acceleration and Liability Equity Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. References.

TITLE I—REMEDY SELECTION

- Sec. 101. Remedy selection.
- Sec. 102. Authorities for institutional controls.
- Sec. 103. Objective risk assessment standards.
- Sec. 104. Hazard ranking system.
- Sec. 105. Removal actions.
- Sec. 106. Consistent application among regional offices.
- Sec. 107. Effective date and transition rules.

TITLE II—LIABILITY AND ALLOCATION

- Sec. 201. Limitations to liability for response costs.
- Sec. 202. Expedited final settlements.
- Sec. 203. Allocation procedures.
- Sec. 204. Recycling transactions.
- Sec. 205. Response action contractors indemnification.

TITLE III—COMMUNITY PARTICIPATION AND HUMAN HEALTH

Subtitle A—Community Participation

- Sec. 301. Definitions.
- Sec. 302. Public participation.
- Sec. 303. Community advisory groups.
- Sec. 304. Technical outreach services for communities.
- Sec. 305. Recruitment and training program.
- Sec. 306. Facility scoring.
- Sec. 307. Grant program.

Subtitle B—Human Health

- Sec. 311. Disease registry and health care providers.
- Sec. 312. Substance profiles.
- Sec. 313. Health studies.
- Sec. 314. Grant awards, contracts, and community assistance activities.
- Sec. 315. Indian health provisions.
- Sec. 316. Public health recommendations in remedial actions.

Subtitle C—General Provisions

- Sec. 321. Transition.

TITLE IV—NATURAL RESOURCE DAMAGES

- Sec. 401. Use of natural resource damages funds.
- Sec. 402. Lead trustee; bundling of claims; potentially responsible party status.
- Sec. 403. Use of mediation.
- Sec. 404. Transition rules.
- Sec. 405. Lost-use and nonuse damages and contingent valuation methodology.
- Sec. 406. Restoration goal and alternatives.
- Sec. 407. Double recovery.
- Sec. 408. Causation.
- Sec. 409. Definitions.

TITLE V—STATE ROLE

- Sec. 501. Contracts or cooperative agreements with States.

Sec. 502. State cost share.

TITLE VI—GENERAL PROVISIONS

Sec. 601. Definitions.

Sec. 602. Approval of Governor not required before listing of facility on National Priorities List.

1 **SEC. 3. REFERENCES.**

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (commonly known as “Superfund”) (42 U.S.C. 9601
9 and following).

10 **TITLE I—REMEDY SELECTION**

11 **SEC. 101. REMEDY SELECTION.**

12 (a) REMEDY SELECTION.—Section 121(b) (42
13 U.S.C. 9621) is amended to read as follows:

14 “(b) REMEDY SELECTION.—

15 “(1) HEALTH AND ENVIRONMENTAL STAND-
16 ARDS.—

17 “(A) IN GENERAL.—Final remedies se-
18 lected under this Act shall protect human
19 health and the environment.

20 “(B) EXPOSURE INFORMATION.—Exposure
21 assessments shall be consistent with the current
22 and reasonably anticipated uses of land, water,

1 and other resources as identified under para-
2 graph (2). The President shall consider and
3 use, in selecting final remedies under this Act,
4 information made available to the President on
5 actual exposure to hazardous substances or pol-
6 lutants or contaminants, along with other rel-
7 evant information.

8 “(C) PLANTS AND ANIMALS.—In determin-
9 ing what is protective of plants and animals for
10 purposes of this section, the Administrator shall
11 base such determinations on the significance of
12 impacts from a release or releases of hazardous
13 substances from a facility to local populations
14 or communities of plants and animals or
15 ecosystems. If a species is listed as threatened
16 or endangered under the Endangered Species
17 Act of 1973 (16 U.S.C. 1531 et seq.) impacts
18 to individual plants or animals may be consid-
19 ered to be impacts to populations of plants or
20 animals.

21 “(2) ANTICIPATED USE OF LAND, WATER, AND
22 OTHER RESOURCES.—

23 “(A) IN GENERAL.—For purposes of se-
24 lecting the method or methods of remediation
25 appropriate for a given facility, the President

1 shall identify the current and reasonably antici-
2 pated uses of land, water, and other resources
3 at and around the facility and the timing of
4 such uses.

5 “(B) LAND USE.—Except as provided in
6 subparagraph (C), in identifying such reason-
7 ably anticipated uses, the President shall con-
8 sider relevant factors, which generally shall in-
9 clude the following:

10 “(i) Any recommendation of the Com-
11 munity Assistance Group. With respect to
12 a Federal facility scheduled for closure or
13 realignment, the President shall consider
14 any joint consensus recommendation of the
15 Community Assistance Group and a rede-
16 velopment authority which has been estab-
17 lished for such facility.

18 “(ii) Views of the affected community
19 not reflected in clause (i).

20 “(iii) The current uses of the facility
21 and surrounding properties, recent develop-
22 ment patterns in the area where the facil-
23 ity is located, and population projections
24 for that area.

1 “(iv) Federal or State land use des-
2 ignations, including Federal facilities and
3 national parks, State ground water or sur-
4 face water recharge areas established
5 under a State’s comprehensive protection
6 plan for ground water or surface water,
7 and recreational areas.

8 “(v) The current land use zoning and
9 future land use plans of the local govern-
10 ment with land use regulatory authority.

11 “(vi) Current plans for the facility by
12 the property owner or owners.

13 “(vii) The availability of alternative
14 sources of drinking water.

15 “(viii) Current or anticipated plans
16 for livestock watering or irrigation.

17 “(ix) Current and anticipated plans of
18 local water suppliers.

19 “(x) The potential for beneficial use.

20 “(xi) The proximity of the contamina-
21 tion to residences, sensitive populations or
22 ecosystems, natural resources, or areas of
23 unique historic or cultural significance.

24 “(xii) Navigational and transportation
25 uses that may be affected by the facility.

1 “(xiii) Reasonably anticipated ecological
2 services provided by the resource.

3 “(xiv) Tribal land use designations for
4 a facility in Indian country (as defined in
5 18 U.S.C. 1151).

6 “(xv) Any additional factors the Ad-
7 ministrator considers appropriate.

8 Land use assumptions restricting future use can be
9 used in evaluating remedial alternatives only to the
10 extent that institutional controls meeting the criteria
11 of subsection (i) and section 104 have been or will
12 be adopted in the final remedy.

13 “(C) GROUNDWATER USE.—In identifying
14 current and reasonably anticipated future
15 ground water uses for purposes of this section,
16 the President shall defer to State determina-
17 tions regarding such uses where the State has
18 made such a determination on a facility-specific
19 basis.

20 “(D) LIMITATION.—Notwithstanding sub-
21 paragraph (C), in no case shall the current or
22 reasonably anticipated future use of ground
23 water be identified as drinking water for
24 ground water—

1 “(i) containing more than 10,000 mil-
2 ligrams per liter total dissolved solids,

3 “(ii) that is so contaminated by natu-
4 rally occurring conditions or by the effects
5 of broad-scale human activity unrelated to
6 a specific activity that restoration of drink-
7 ing water quality is impracticable, or

8 “(iii) if the potential source of drink-
9 ing water is physically incapable of yielding
10 a quantity of 150 gallons per day of water
11 to a well or spring without adverse envi-
12 ronmental consequences.

13 “(E) INCLUSION IN ADMINISTRATIVE
14 RECORD.—All information considered by the
15 President in evaluating current and reasonably
16 anticipated future land uses under this sub-
17 section shall be included in the administrative
18 record under section 113(k).

19 “(3) SITE-SPECIFIC RISK ASSESSMENT.—The
20 President shall use site-specific risk assessment that
21 meets the requirements of the principles set forth in
22 section 127(a) to—

23 “(A) determine the nature and extent of
24 risk to human health and the environment;

1 “(B) assist in establishing remedial objec-
2 tives for the facility respecting releases or
3 threatened releases, and in identifying geo-
4 graphic areas or exposure pathways of concern;
5 and

6 “(C) evaluate alternative remedial actions
7 for the facility to determine their risk reduction
8 benefits and assist in selecting the remedial ac-
9 tion for the facility that meets the criteria of
10 paragraph (1).

11 “(4) APPROPRIATE REMEDIAL ACTION.—

12 “(A) REMEDY EVALUATION.—The Presi-
13 dent shall identify and select an appropriate
14 remedy that protects human health and the en-
15 vironment pursuant to section 121(a) by bal-
16 ancing the following factors:

17 “(i) The effectiveness of the remedy,
18 including its implementability.

19 “(ii) The long-term reliability of the
20 remedy, that is, its capability to achieve
21 long-term protection of human health and
22 the environment, including consideration of
23 the preference for treatment of hot spots.

24 “(iii) Any short-term risk posed by
25 the implementation of the remedy to the

1 affected community, to those engaged in
2 the cleanup effort, and to the environment.

3 “(iv) The acceptability of the remedy
4 to the affected community.

5 “(v) The reasonableness of the cost of
6 the remedy.

7 “(B) MONITORING OR OVERSIGHT.—Where
8 the President selects a final remedy under this
9 Act that relies on stabilization, containment, or
10 other engineering controls to limit exposure, in-
11 stitutional controls, or other measures, the
12 President shall include enforceable requirements
13 for the regular monitoring or oversight of the
14 effectiveness and protectiveness of the remedy.

15 “(C) HOT SPOTS.—(i) In conducting the
16 evaluation under subparagraph (A), the Presi-
17 dent shall prefer a remedy which includes treat-
18 ment of hot spots.

19 “(ii) For purposes of this section, the term
20 ‘hot spot’ means a discrete area within a facility
21 that contains hazardous substances, pollutants
22 or contaminants that, because of the interaction
23 of high toxicity, likelihood of mobility, and un-
24 certainty regarding the reliability of contain-
25 ment, present a substantial risk to human

1 health or the environment should exposure
2 occur. The President shall develop guidelines
3 for the identification of hot spots. Such guide-
4 lines shall recommend appropriate field inves-
5 tigation that will not require extraordinarily
6 complex or costly measures. The guidelines will
7 state that the more concentrated and toxic the
8 area, the less likely the exposure scenarios rea-
9 sonably considered in determining whether some
10 form of treatment should be preferred. Treat-
11 ment alternatives pursuant to this section shall
12 be selected on a site-specific basis and are not
13 controlled by section 3004 of the Solid Waste
14 Disposal Act.

15 “(iii) In determining an appropriate rem-
16 edy for hot spots, the President shall consider
17 the factors under subparagraph (A).

18 “(iv) Notwithstanding the preference for
19 treatment of a hot spot, the President may se-
20 lect a final containment remedy for hot spots at
21 landfills and mining sites or similar facilities
22 under the following circumstances:

23 “(I) The hot spot is small relative to
24 the overall volume of waste or contamina-
25 tion being addressed, the hot spot is not

1 readily identifiable and accessible, and
2 without the presence of the hot spot con-
3 tainment would have been selected as the
4 appropriate remedy under subparagraph
5 (A) for the larger body of waste or area of
6 contamination in which the hot spot is lo-
7 cated.

8 “(II) The volume and areal extent of
9 the hot spot is extraordinary compared to
10 other facilities, and it is highly unlikely
11 due to the size and other characteristics of
12 the hot spot that any treatment technology
13 will be developed that could be imple-
14 mented at reasonable cost.

15 Where final containment for a hot spot is selected,
16 the President shall publish an explanation of the
17 basis for that decision.”.

18 (b) OTHER STANDARDS.—Section 121(d) (42 U.S.C.
19 9621(d)) is amended—

20 (1) by striking so much of subsection (d) as
21 precedes paragraph (3) and inserting the following:

22 “(d) OTHER STANDARDS.—(1) Except as provided in
23 paragraph (2), for any facility to which they apply, the
24 standards set forth in this section shall govern the level
25 or standard of control for remedies, remedy selection, and

1 on-site management of hazardous substances in lieu of any
2 other Federal, State, or local standards where such action
3 is selected and carried out in compliance with this section.

4 “(2)(A) Point source discharges or emissions of haz-
5 ardous substances into the waters of the United States
6 or the ambient air that result from the conduct of the rem-
7 edy shall comply with State and Federal standards re-
8 specting such discharges or emissions.

9 “(B)(i) Remedial actions selected under this section
10 or otherwise required or agreed to by the President under
11 this Act shall attain a degree of cleanup of hazardous sub-
12 stances, pollutants, and contaminants released into the en-
13 vironment and of control of further release which assures
14 protection of human health and the environment.

15 “(ii) With respect to any hazardous substance, pollut-
16 ant, or contaminant that will remain onsite, if—

17 “(I) any standard, requirement, criteria, or lim-
18 itation under any Federal environmental law, includ-
19 ing, but not limited to, the Toxic Substances Control
20 Act, the Safe Drinking Water Act, the Clean Air
21 Act, the Clean Water Act, the Marine Protection,
22 Research, and Sanctuaries Act, or the Solid Waste
23 Disposal Act; or

24 “(II) any promulgated standard, requirement,
25 criteria, or limitation under a State environmental

1 or facility siting law that is more stringent than any
2 Federal standard, requirement, criteria, or limita-
3 tion, including each such State standard, require-
4 ment, criteria, or limitation contained in a program
5 approved, authorized, or delegated by the Adminis-
6 trator under a statute cited in subclause (I), and
7 that has been identified to the President by the
8 State in a timely manner,

9 is legally applicable to the conduct or operation of the re-
10 medial action or to the hazardous substance or pollutant
11 or contaminant concerned, the remedial action selected
12 under section 104 or secured under section 106 shall re-
13 quire, at the completion of the remedial action, a level or
14 standard of control for such hazardous substance or pol-
15 lutant or contaminant which at least attains such legally
16 applicable standard, requirement, criteria, or limitation.

17 “(C) GROUNDWATER REMEDIES.—(i) Response ac-
18 tions shall return usable ground waters to beneficial use
19 wherever practicable, within a timeframe that is reason-
20 able given the particular circumstances of the site.

21 “(ii) In selecting remedies for ground water, the
22 President shall also follow these additional overall objec-
23 tives for site response actions:

24 “(I) Prevent exposure to contaminated ground
25 water above acceptable risk levels.

1 “(II) Prevent or minimize further migration of
2 the contaminant plume.

3 “(III) As needed, prevent or minimize further
4 migration of contaminants from source materials to
5 ground water.

6 “(iii) If the current or reasonably anticipated use (as
7 determined under subsection (b)(2)) of ground water is
8 drinking water, final remedies selected under this Act shall
9 require a level or standard of control which meets maxi-
10 mum contaminant levels established under the Safe Drink-
11 ing Water Act at reasonable points of compliance, as ap-
12 propriate, considering the nature and timing of such use
13 of the ground water.

14 “(D) ALTERNATE CONCENTRATION LIMITS.—For
15 the purposes of this section, a process for establishing al-
16 ternate concentration limits to those otherwise applicable
17 for hazardous constituents in groundwater under subpara-
18 graph (A) may not be used to establish applicable stand-
19 ards under this paragraph if the process assumes a point
20 of human exposure beyond the boundary of the facility,
21 as defined at the conclusion of the remedial investigation
22 and feasibility study, except where—

23 “(i) there are known and projected points of
24 entry of such groundwater into surface water;

1 “(ii) on the basis of measurements or projec-
2 tions, there is or will be no statistically significant
3 increase of such constituents from such groundwater
4 in such surface water at the point of entry or at any
5 point where there is reason to believe accumulation
6 of constituents may occur downstream; and

7 “(iii) the remedial action includes enforceable
8 measures that will preclude human exposure to the
9 contaminated groundwater at any point between the
10 facility boundary and all known and projected points
11 of entry of such groundwater into surface water;

12 then the assumed point of human exposure may be at such
13 known and projected points of entry.

14 “(E) Compliance with promulgated State standards
15 for protection under subparagraph (B) shall not be re-
16 quired unless such laws and standards are—

17 “(i) of general applicability,

18 “(ii) consistently applied, and

19 “(iii) identified to the President in a timely
20 fashion.

21 “(F) LIMITS ON LAND DISPOSAL PROHIBITIONS.—

22 (i) Except as provided in clause (ii), a State standard, re-
23 quirement, criteria, or limitation (including any State
24 siting standard or requirement) which could effectively re-
25 sult in the statewide prohibition of land disposal of haz-

1 ardous substances, pollutants, or contaminants shall not
2 apply.

3 “(ii) Any State standard, requirement, criteria, or
4 limitation referred to in clause (i) shall apply where each
5 of the following conditions is met:

6 “(I) The State standard, requirement, criteria,
7 or limitation is of general applicability and was
8 adopted by formal means.

9 “(II) The State standard, requirement, criteria,
10 or limitation was adopted on the basis of hydrologic,
11 geologic, or other relevant considerations and was
12 not adopted for the purposes of precluding onsite re-
13 medial actions or other land disposal for reasons un-
14 related to protection of human health and the envi-
15 ronment.

16 “(III) The State arranges for, and assures pay-
17 ment of the incremental costs of utilizing, a facility
18 for disposition of the hazardous substances, pollut-
19 ants, or contaminants concerned.”;

20 (2) by striking so much of paragraph (4) as
21 precedes subparagraph (A) and inserting the follow-
22 ing:

23 “(4) WAIVER.—The President may waive any re-
24 quirement of subparagraphs (A) through (C) of paragraph
25 (2) of this subsection if the President finds that—”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(5) TECHNICAL IMPRACTICABILITY.—For purposes
4 of subparagraph (C) of paragraph (4) the President shall
5 make findings of technical impracticability from an engi-
6 neering perspective on the basis of projections, modeling,
7 or other analysis on a site-specific basis (including the
8 consideration of information presented by responsible par-
9 ties at such facility) without a requirement that the reme-
10 dial measure for which a finding of technical imprac-
11 ticability is under consideration be first constructed or in-
12 stalled and operated and its performance over time re-
13 viewed, unless such projection, modeling, or other analysis
14 is insufficient or inadequate to make such a finding.”.

15 (c) EARLY EVALUATION AND PHASED REMEDIAL
16 ACTION.—Section 121 (42 U.S.C. 9621) is amended by
17 adding the following new subsections after subsection (f):

18 “(g) EARLY EVALUATION AND PHASED REMEDIAL
19 ACTION.—(1) The President shall consider new proce-
20 dures for conducting remedial investigations and feasibil-
21 ity studies in an efficient, cost-effective, and timely man-
22 ner. Such new procedures shall take into consideration a
23 results-oriented approach in order to minimize the time
24 required to conduct such investigations and studies. The
25 President shall emphasize performance-based standards

1 where feasible and, where appropriate, provide means to
2 update the most practicable methods under such perform-
3 ance-based approaches. The President shall, as appro-
4 priate, employ a phased approach to site characterization
5 and remediation in which remedies are arrived at through
6 a sequence of investigations and actions. Information
7 gathered in one phase shall be used to inform each succes-
8 sive phase until final remediation goals are determined
9 and attained.

10 “(2) To facilitate efficient and effective site charac-
11 terization that promotes early evaluation of remedial alter-
12 natives and to prevent ground water contamination prob-
13 lems from worsening, the President shall ensure, to the
14 extent practicable, that hydrogeologic and contaminant-re-
15 lated information necessary to select final ground water
16 remedial actions, including findings of technical imprac-
17 ticability, shall be collected as part of site characterization
18 activities prior to and during the remedial investigation.

19 “(h) INSTITUTIONAL CONTROLS.—

20 “(1) USE OF INSTITUTIONAL CONTROLS.—

21 Whenever the President selects a final remedial ac-
22 tion under this Act which relies on restrictions on
23 the use of land, water, or other resources to achieve
24 protection of human health and the environment, the
25 President shall specify the nature of the restrictions

1 required to achieve such protections, including re-
2 strictions on the permissible uses of land, prohibi-
3 tions on specified activities upon the property, re-
4 strictions on the drilling of drinking water wells or
5 other use of ground water, or restrictions on the use
6 of surface water, and may ensure that such restric-
7 tions are incorporated into a hazardous substance
8 easement, as provided by section 104(k). In review-
9 ing remedial action alternatives that would require
10 the use of such restrictions and providing oppor-
11 tunity for public comment on those alternatives, the
12 President shall identify the nature of any institu-
13 tional controls that would be required to implement
14 such restrictions, the likely duration of such restric-
15 tions, and the anticipated costs of acquiring any ap-
16 propriate hazardous substance easements and en-
17 forcing the appropriate restrictions.

18 “(2) REGISTRY.—The President shall maintain
19 a registry of restrictions on the use of land, water,
20 or other resources through institutional controls that
21 are included in final records of decisions as part of
22 the basis of decision at National Priorities List fa-
23 cilities.

24 “(3) REPORT.—The President shall, in con-
25 sultation with representatives of State and local gov-

1 ernments, study the use and effectiveness of institu-
2 tional controls at National Priorities List facilities.
3 Within 3 years after the date of enactment of this
4 subsection, and after issuance of a draft report and
5 opportunity for public comment, the President shall
6 issue a final report on the use and effectiveness of
7 institutional controls at National Priorities List fa-
8 cilities, together with recommendations to improve
9 efficiency and effectiveness.”.

10 **SEC. 102. AUTHORITIES FOR INSTITUTIONAL CONTROLS.**

11 Section 104 (42 U.S.C. 9604) is amended by adding
12 at the end the following:

13 “(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

14 “(1) AUTHORITY OF PRESIDENT TO ACQUIRE
15 EASEMENTS.—In order to prevent exposure to, re-
16 duce the likelihood of, or otherwise respond to a re-
17 lease or threatened release of a hazardous substance,
18 the President may acquire, at fair market value, or
19 for other consideration as agreed to by the parties,
20 a hazardous substance easement which restricts, lim-
21 its, or controls the use of land, water, or other natu-
22 ral resources, including specifying permissible or im-
23 permissible uses of land, prohibiting specified activi-
24 ties upon property, prohibiting the drilling of wells

1 or use of ground water, or restricting the use of sur-
2 face water.

3 “(2) USE OF EASEMENTS.—A hazardous sub-
4 stance easement and notice of a property use restric-
5 tion under this subsection may be used wherever in-
6 stitutional controls have been selected as a compo-
7 nent of a removal or remedial action in accordance
8 with this Act and the National Contingency Plan.
9 Such easements and notices shall not be used in
10 cases in which institutional controls are not relied
11 upon in a removal or remedial action. Whenever
12 such controls are selected as a component of a re-
13 moval or remedial action, the President shall ensure
14 that the terms of the controls and, as appropriate,
15 the easement are specified in all appropriate decision
16 documents, enforcement orders, and public informa-
17 tion regarding the site.

18 “(3) PERSONS SUBJECT TO EASEMENTS.—A
19 hazardous substance easement shall be enforceable
20 for 20 years and may be renewed for additional 20-
21 year periods where necessary to meet the standards
22 of this section (unless terminated and released as
23 provided for in this section) against any owner of
24 the affected property and all persons who subse-
25 quently acquire interest in the property or rights to

1 use the property, including lessees, licensees, and
2 any other person with an interest in the property,
3 without respect to privity or lack of privity of estate
4 or contract, lack of benefit running to any other
5 property, assignment of the easement to another
6 party, or any other circumstance which might other-
7 wise affect the enforceability of easements or similar
8 deed restrictions under the laws of the State. The
9 easement shall be binding upon holders of any other
10 interests in the property regardless of whether such
11 interests are recorded or whether they were recorded
12 prior or subsequent to the easement, and shall re-
13 main in effect notwithstanding any foreclosure or
14 other assertion of such interests.

15 “(4) CONTENTS OF EASEMENTS.—A hazardous
16 substance easement shall contain, at a minimum—

17 “(A) a legal description of the property af-
18 fected;

19 “(B) the name or names of any current
20 owner or owners of the property as reflected in
21 public land records;

22 “(C) a description of the release or threat-
23 ened release; and

1 “(D) a statement as to the nature of the
2 restriction, limitation, or control created by the
3 easement.

4 “(5) USE RESTRICTION NOTICE.—Whenever the
5 President acquires a hazardous substance easement
6 or assigns a hazardous substance easement to an-
7 other party, the President shall record a notice of
8 property use restriction in the public land records
9 for the jurisdiction in which the affected property is
10 located. Such a notice shall specify restrictions, limi-
11 tations, or controls on the use of land, water, or
12 other natural resources provided for in the hazard-
13 ous substance easement.

14 “(6) FILING OF NOTICE.—Wherever recording
15 in the public land records is required under this sub-
16 section, the President shall file the notice or other
17 instrument in the appropriate office within the State
18 (or governmental subdivision) in which the affected
19 property is located, as designated by State law. If
20 the State has not by law designated one office for
21 the recording of interests in real property or claims
22 or rights burdening real property, the document or
23 notice shall be filed in the office of the clerk of the
24 United States district court for the district in which
25 the affected property is located.

1 “(7) METHODS OF ACQUIRING EASEMENTS.—

2 The President may acquire a hazardous substance
3 easement by purchase or other agreement, by con-
4 demnation, or by any other means permitted by law.
5 Compensation for such easement shall be at fair
6 market value, or for other consideration as agreed to
7 by the parties, for the interest acquired. The direct
8 cost of such easements, ensuring adequate public no-
9 tice of such easements, and otherwise tracking and
10 maintaining the protections afforded by the ease-
11 ments shall be considered response costs which are
12 recoverable under this Act.

13 “(8) ASSIGNMENT OF EASEMENTS TO PARTIES
14 OTHER THAN THE PRESIDENT.—

15 “(A) AUTHORITY TO ASSIGN.—The Presi-
16 dent may assign an easement acquired under
17 this subsection to a State or other governmental
18 entity that has the capability of effectively en-
19 forcing the easement over the period of time
20 necessary to achieve the purposes of the ease-
21 ment. In the case of any assignment, the ease-
22 ment shall be fully enforceable by the assignee.
23 Any assignment of such an easement by the
24 President may be made by following the same
25 procedures as are used for the transfer of an

1 interest in real property to a State under sub-
2 section (j).

3 “(B) EFFECT OF ASSIGNMENT.—Any in-
4 terest in property granted to a State or other
5 governmental entity which restricts, limits, or
6 controls the use of land, water, or other natural
7 resources in order to prevent exposure to, re-
8 duce the likelihood of, or otherwise respond to,
9 a release or threatened release of a hazardous
10 substance, and which is expressly designated in
11 writing as a hazardous substance easement
12 within the meaning of this paragraph, shall cre-
13 ate the same rights, have the same legal effect,
14 and be enforceable in the same manner as a
15 hazardous substance easement held by the
16 President regardless of whether the interest in
17 property is otherwise denominated as an ease-
18 ment, covenant, or any other form of property
19 right.

20 “(9) PUBLIC NOTICE.—Not later than 180 days
21 after the date of the enactment of this subsection,
22 the President shall issue regulations regarding the
23 procedures to be used for public notice of proposed
24 property use restrictions. Such regulations shall en-
25 sure that before acquiring a hazardous substance

1 easement, and before recording any notice of such
2 easement, the President will give notice and an op-
3 portunity to comment to the owner of the affected
4 property, all other persons with recorded interests in
5 the property, any lessees or other authorized occu-
6 pants of the property known to the President, the
7 State and any municipalities in which the property
8 is located, any relevant community assistance group
9 established under section 117, the affected commu-
10 nity, and the general public.

11 “(10) TERMINATION OF EASEMENTS.—An ease-
12 ment acquired under this subsection shall remain in
13 force until it expires by its terms or until the holder
14 of the easement executes and records a termination
15 and release in accordance with the terms of the ease-
16 ment and approved by the Administrator of the En-
17 vironmental Protection Agency or the relevant as-
18 signee. Such termination shall be recorded in the
19 same manner as the easement.

20 “(11) ENFORCEMENT.—

21 “(A) EFFECT OF VIOLATIONS.—Violation
22 of any restriction, limitation, or control imposed
23 under a hazardous substance easement shall
24 have the same effect as failure to comply with
25 an order issued under section 106 and relief

1 may be sought either in enforcement actions
2 under section 106(b)(1), section 120(g), or sec-
3 tion 127(e) or in citizens suits under section
4 310. No citizens suit under section 310 to en-
5 force such a notice may be commenced if the
6 holder of the easement has commenced and is
7 diligently prosecuting an action in court to en-
8 force the easement.

9 “(B) ENFORCEMENT ACTIONS.—The
10 President may take appropriate enforcement ac-
11 tions to ensure compliance with the terms of
12 the easement whenever the Administrator of the
13 Environmental Protection Agency determines
14 that the terms set forth in the easement are
15 being violated. If the easement has been as-
16 signed to a party other than the President and
17 that party has not taken appropriate enforce-
18 ment actions, the President may notify the as-
19 signee of the violation. If the party does not
20 take appropriate enforcement actions within 30
21 days of such notification, or sooner in the case
22 of an imminent hazard, the President may initi-
23 ate such enforcement actions.

24 “(12) APPLICABILITY OF OTHER PROVISIONS.—

25 Holding a hazardous substance easement shall not

1 subject either the holder thereof or the owner of the
2 affected property to liability under section 107. Any
3 such easement acquired by the President shall not
4 be subject to the requirements of subsection (j) or
5 section 120(h).”.

6 **SEC. 103. OBJECTIVE RISK ASSESSMENT STANDARDS.**

7 Title I (42 U.S.C. 9621 et seq.) is amended by adding
8 the following new section at the end thereof:

9 **“SEC. 127. OBJECTIVE RISK ASSESSMENT PRINCIPLES,**
10 **GUIDELINES, AND REVIEWS.**

11 “Risk assessments and characterizations conducted
12 under this Act shall—

13 “(1) provide scientifically objective, informative,
14 and understandable assessments, estimates, and
15 characterizations which neither minimize nor exaggerate the nature and magnitude of current or potential future risks to human health and the environment;
16
17
18

19 “(2) distinguish scientific findings from other
20 considerations; and

21 “(3) be based on the best, relevant, and current
22 scientific and technical information, including available or reasonably obtainable site-specific and all
23 other relevant information made available to the
24 President.”.

1 **SEC. 104. HAZARD RANKING SYSTEM.**

2 Section 105(c) (42 U.S.C. 9605(c)) is amended by
3 inserting after paragraph (4) the following new para-
4 graphs:

5 “(5) RISK PRIORITIZATION.—In setting prior-
6 ities under subsection (a)(8), the President shall
7 place highest priority on facilities with releases of
8 hazardous substances which result in actual ongoing
9 human exposures at levels of public health concern
10 or demonstrated adverse health effects as identified
11 in a health assessment conducted by the Agency for
12 Toxic Substances and Disease Registry or are rea-
13 sonably anticipated based on currently known facts.

14 “(6) PRIOR RESPONSE ACTION.—Any evalua-
15 tion under this section shall take into account all
16 prior response actions taken at the facility.”.

17 **SEC. 105. REMOVAL ACTIONS.**

18 Section 104(c)(1) (42 U.S.C. 9604(c)(1)) is amend-
19 ed—

20 (1) by striking “consistent with the remedial
21 action to be taken” and inserting “not inconsistent
22 with any remedial action that has been selected or
23 is anticipated at the time of the removal action,”;

24 (2) by striking “\$2,000,000” and inserting
25 “\$3,000,000”; and

1 (3) by striking “12 months” and inserting “two
2 years”.

3 **SEC. 106. CONSISTENT APPLICATION AMONG REGIONAL**
4 **OFFICES.**

5 Section 115 (42 U.S.C. 9615) is amended—

6 (1) by striking “The President” and inserting
7 “(a) PRESIDENTIAL RULEMAKING AND DELEGATION
8 AUTHORITY.—The President”; and

9 (2) by inserting at the end thereof the following
10 new subsection:

11 “(b) CONSISTENT APPLICATION AMONG REGIONAL
12 OFFICES.—Each Regional Administrator should imple-
13 ment, execute, and enforce this Act and regulations, guid-
14 ance, and policies established in accordance with this Act
15 by (1) the President (or by the Administrator pursuant
16 to a delegation from the President), or (2) the Adminis-
17 trator (or by the Deputy Administrator or an Assistant
18 Administrator pursuant to a delegation from the Adminis-
19 trator).”.

20 **SEC. 107. EFFECTIVE DATE AND TRANSITION RULES.**

21 (a) EFFECTIVE DATE.—The amendments made by
22 this title shall apply to any final remedial action selected
23 under the Comprehensive Environmental Response, Com-
24 pensation, and Liability Act of 1980 for which the Record
25 of Decision (hereinafter in this section referred to as the

1 “ROD”) was signed, or the consent decree was lodged,
 2 after October 28, 1997.

3 (b) REMEDY UPDATES.—The Environmental Protec-
 4 tion Agency shall maintain a process to update remedies
 5 for which design, construction, or operation and mainte-
 6 nance activities are ongoing as of the date of the enact-
 7 ment of this Act in order to bring past decisions into line
 8 with the current state of knowledge with respect to reme-
 9 diation science, technology and engineering, best available
 10 facility data, and most recent Environmental Protection
 11 Agency policy and guidance. In doing so, the Environ-
 12 mental Protection Agency shall improve the cost-effective-
 13 ness of site remediation while ensuring reliable short- and
 14 long-term protection of human health and the environ-
 15 ment.

16 **TITLE II—LIABILITY AND** 17 **ALLOCATION**

18 **SEC. 201. LIMITATIONS TO LIABILITY FOR RESPONSE** 19 **COSTS.**

20 (a) LIMITATIONS ON LIABILITY.—Section 107(a) (42
 21 U.S.C. 9607(a)) is amended as follows:

22 (1) In paragraph (1), by striking “and” and in-
 23 serting “or”.

24 (2) In paragraph (3), by striking “person,” and
 25 inserting “person or”.

1 (3) In paragraph (4)(B)—

2 (A) by striking “other” both places it ap-
3 pears; and

4 (B) by inserting “, other than the United
5 States, a State, or an Indian tribe,” before the
6 phrase “consistent with the national contin-
7 gency plan”.

8 (4) In paragraph (4), by striking “by such per-
9 son,” and all that follows through “shall be liable
10 for—” and inserting in lieu thereof the following:
11 “by such person—

12 from which there is a release, or a threatened release, that
13 causes the incurrence of response costs, of a hazardous
14 substance, shall be liable for—”.

15 (5) By designating the text beginning with
16 “The amounts recoverable” and ending with “this
17 subsection commences.” as paragraph (5) and align-
18 ing the margin of such text with paragraph (4).

19 (6) By adding the following new paragraphs
20 after paragraph (5):

21 “(6) LIABILITY EXEMPTIONS.—Notwithstand-
22 ing paragraphs (1) through (4) of this subsection, a
23 person who does not impede the performance of a
24 response action or natural resource restoration at a

1 facility listed on the National Priorities List shall
2 not be liable:

3 “(A) SMALL BUSINESS EXEMPTIONS.—

4 “(i) IN GENERAL.—With respect to
5 response costs incurred after October 28,
6 1997, for activity prior to such date, to the
7 extent liability at such facility is based
8 solely on paragraph (3) or (4) of this sub-
9 section and the person is a business that,
10 during the taxable year preceding the date
11 of transmittal of notification that the busi-
12 ness is a potentially responsible party,
13 had—

14 “(I) full- and part-time employ-
15 ees whose combined time was equiva-
16 lent to 30 or fewer full-time employees
17 or for that taxable year reported
18 \$3,000,000 or less in annual gross
19 revenues; or

20 “(II) full- and part-time employ-
21 ees whose combined time was equiva-
22 lent to 60 or fewer full-time employees
23 or for that taxable year reported
24 \$5,000,000 or less in annual gross
25 revenues, if the Administrator decides

1 in the Administrator’s discretion to
2 raise the threshold under subclause
3 (I) on a site-specific and party-specific
4 basis.

5 “(ii) EXEMPTION FOR MUNICIPAL
6 SOLID WASTE.—With respect to costs and
7 activity described in clause (i), to the ex-
8 tent liability at such facility is based solely
9 on paragraph (3) or (4) of this subsection
10 and the person arranged for disposal,
11 treatment, or transport for disposal or
12 treatment, or accepted for transport for
13 disposal or treatment of only municipal
14 solid waste or sewage sludge owned or pos-
15 sessed by such person and the person is a
16 business that, during the taxable year pre-
17 ceding the date of transmittal of notifica-
18 tion that the business is a potentially re-
19 sponsible party, had full- and part-time
20 employees whose combined time was equiv-
21 alent to 100 or fewer full-time employees.

22 “(iii) LIMITATION.—This subpara-
23 graph shall not apply to a person otherwise
24 covered if the Administrator has deter-
25 mined that—

1 “(I) the hazardous substances
2 generated or transported by the small
3 business contributed or could contrib-
4 ute significantly to the response costs
5 at the facility; or

6 “(II) the small business has
7 failed to substantially comply with in-
8 formation requests or administrative
9 subpoenas issued by the United
10 States.

11 “(iv) EFFECT ON LIABILITY.—This
12 subparagraph shall have no effect on the
13 liability of any other person.

14 “(B) DE MICROMIS EXEMPTION.—With re-
15 spect to response costs incurred after October
16 28, 1997, for activity prior to such date, to the
17 extent liability at such facility is based solely on
18 paragraph (3) or (4) of this subsection, and the
19 person can demonstrate that it arranged for
20 disposal or treatment, or transport for disposal
21 or treatment or accepted for transport for dis-
22 posal or treatment, 110 gallons or less of liquid
23 materials containing hazardous substances or
24 pollutants or contaminants or less, 200 pounds
25 or less of solid materials containing hazardous

1 substances or pollutants or contaminants, or
2 such greater or lesser amount as the Adminis-
3 trator may determine by regulation, except
4 where—

5 “(i) the Administrator has determined
6 that such material contributed or could
7 contribute significantly to the costs of re-
8 sponse at the facility, or

9 “(ii) the person has failed to substan-
10 tially comply with information requests or
11 administrative subpoenas by the United
12 States.

13 “(C) BONA FIDE PROSPECTIVE PUR-
14 CHASER EXEMPTION.—To the extent liability at
15 such facility is based solely on paragraph (1) of
16 this subsection for a release or threat of release
17 from the facility, and the person is a bona fide
18 prospective purchaser of the facility. Not later
19 than 18 months after the date of the enactment
20 of the Superfund Cleanup Acceleration and Li-
21 ability Equity Act, the Administrator shall issue
22 guidelines explaining criteria by which a person
23 may qualify as a bona fide prospective pur-
24 chaser. Such guidelines shall be made readily
25 available to the public.

1 “(D) INHERITANCE OR BEQUEST EXEMP-
2 TION.—To the extent liability at such facility is
3 based solely on the person’s status as owner
4 under paragraph (1) for a release or threat of
5 release from the facility, and the person ac-
6 quired the facility by inheritance or bequest if
7 the person—

8 “(i) acquired the real property on
9 which the facility concerned is located after
10 disposal or placement of the hazardous
11 substance took place;

12 “(ii) did not cause or contribute to the
13 release or threat of release; and

14 “(iii) exercised due care with respect
15 to the hazardous substance concerned, in-
16 cluding precautions against foreseeable
17 acts of third parties, taking into consider-
18 ation the characteristics of such hazardous
19 substance, in light of all relevant facts and
20 circumstances.

21 “(E) EXEMPTION FOR OWNERSHIP OF
22 RIGHTS-OF-WAY OR GRANTING OF BUSINESS LI-
23 CENSES.—To the extent the liability of a Fed-
24 eral or State governmental entity or municipal-
25 ity at such facility is based solely on its—

1 “(i) ownership of a road, street, or
2 other right of way or public transportation
3 route (other than railroad rights of way
4 and railroad property) over which hazard-
5 ous substances are transported; or

6 “(ii) granting of a license or permit to
7 conduct business.

8 “(F) EXEMPTION FOR RESPONSES TO NAT-
9 URAL DISASTERS.—To the extent the liability of
10 a department, agency, or instrumentality of the
11 United States at such facility is based on ac-
12 tions of such department, agency, or instrumen-
13 tality taken in response to a natural disaster
14 pursuant to the Act of August 18, 1941 (33
15 U.S.C. 701n) or The Robert T. Stafford Disas-
16 ter Relief and Emergency Act (42 U.S.C. 5121
17 and following).

18 “(7) LIMITATION RELATING TO MUNICIPAL
19 SOLID WASTE AND SEWAGE SLUDGE.—

20 “(1) IN GENERAL.—Notwithstanding para-
21 graphs (1) through (4), with respect to re-
22 sponse costs incurred after October 28, 1997,
23 for activity prior to such date, a person shall
24 not be liable for more than 10 percent of total
25 response costs at a facility listed on the Na-

1 tional Priorities List, in aggregate, to the ex-
2 tent the person is liable solely under paragraph
3 (3) or (4) of this subsection, and the arrange-
4 ment for disposal, treatment, or transport for
5 disposal or treatment, or the acceptance for
6 transport for disposal or treatment, involved
7 only municipal solid waste or sewage sludge. In
8 any case in which more than one person at a
9 facility comes within the coverage of this para-
10 graph, the 10 percent limitation on liability
11 shall apply to the aggregate liability of all such
12 persons. Such limitation on liability shall apply
13 only if either the acts or omissions giving rise
14 to liability occurred before October 28, 1997.

15 “(2) LIMITATIONS.—

16 “(A) DEFINITIONS.—In this paragraph:

17 “(i) LARGE MUNICIPALITY.—The
18 term ‘large municipality’ means a munici-
19 pality with a population of 100,000 or
20 more according to the 1990 census.

21 “(ii) SMALL MUNICIPALITY.—The
22 term ‘small municipality’ means a munici-
23 pality with a population of less than
24 100,000 according to the 1990 census.

1 “(B) AGGREGATE LIABILITY OF SMALL
2 MUNICIPALITIES.—With respect to a facility
3 that received municipal solid waste (in this
4 paragraph referred to as a codisposal landfill),
5 that was proposed for listing on the National
6 Priorities List before October 28, 1997, that is
7 owned or operated only by small municipalities,
8 and that is not subject to the criteria for solid
9 waste landfills published under subtitle D of the
10 Solid Waste Disposal Act (42 U.S.C. 6941 et
11 seq.) at part 258 of title 40, Code of Federal
12 Regulations (or a successor regulation), the ag-
13 gregate liability of all small municipalities for
14 response costs incurred on or after October 28,
15 1997, shall be the lesser of—

16 “(i) 10 percent of the total amount of
17 response costs at the facility; or

18 “(ii) the costs of compliance with the
19 requirements of subtitle D of the Solid
20 Waste Disposal Act (42 U.S.C. 6941 et
21 seq.) for the facility (as if the facility had
22 continued to accept municipal solid waste
23 through January 1, 1997);.

24 “(C) AGGREGATE LIABILITY OF LARGE
25 MUNICIPALITIES.—With respect to a codisposal

landfill that was proposed for listing on the National Priorities List before October 28, 1997, that is owned or operated only by large municipalities, and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of all large municipalities for response costs incurred on or after October 28, 1997, shall be the lesser of—

“(i) 20 percent of the proportion of the total amount of response costs at the facility; or

“(ii) the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).

“(8) LIMITATION RELATING TO CERTAIN TAX-EXEMPT ORGANIZATIONS.—(A) Notwithstanding paragraphs (1) through (4) of this subsection, with respect to response costs incurred after October 28, 1997, the liability of a person who does not impede

1 the performance of response actions or natural re-
2 source restoration with respect to a release or
3 threatened release from a vessel or facility listed on
4 the National Priorities List shall be limited to the
5 lesser of the fair market value of the vessel or facil-
6 ity or the actual proceeds of the sale of the vessel
7 or facility received by the person, to the extent such
8 liability is based solely on the person's status under
9 paragraph (1) as owner of the vessel or facility if the
10 person—

11 “(i) holding title, either outright or in
12 trust, to the vessel or facility is an organization
13 described in section 501(c)(3) of the Internal
14 Revenue Code of 1986 and exempt from tax
15 under section 501(a) of such Code and holds
16 such title as a result of a charitable donation
17 that qualifies under sections 170, 2055, or
18 2522 of such Code;

19 “(ii) exercised due care with respect to the
20 hazardous substance concerned, including pre-
21 cautions against foreseeable acts of third par-
22 ties, taking into consideration the characteris-
23 tics of such hazardous substance, in light of all
24 relevant facts and circumstances;

1 “(iii) did not cause or contribute to the re-
2 lease or threat of release; and

3 “(iv) acquired the real property on which
4 the facility concerned is located, or acquired the
5 vessel, after disposal or placement of the haz-
6 ardous substance took place.

7 “(B) At any facility to which the provisions of
8 this paragraph apply, the owner or operator of the
9 vessel or facility within the meaning of paragraph
10 (1) shall include any person who owned or operated
11 the facility immediately prior to the person described
12 in subparagraph (A).

13 “(9) CONTIGUOUS PROPERTY.—A person who
14 owns or operates real property that is contiguous to
15 or otherwise situated with respect to real property
16 on which there has been a release of a hazardous
17 substance and that is or may be contaminated by
18 the release shall not be considered an owner or oper-
19 ator of a facility under paragraph (1)(A) solely by
20 reason of such contamination if such person estab-
21 lishes by a preponderance of the evidence that—

22 “(A) such person exercised due care with
23 respect to the hazardous substance, taking into
24 consideration the characteristics of such haz-

1 ardous substance, in light of all relevant facts
2 and circumstances;

3 “(B) such person took precautions against
4 foreseeable acts or omissions that resulted in
5 the release and the consequences that could
6 foreseeably result from such acts or omissions;

7 “(C) such person did not cause or contrib-
8 ute to the release; and

9 “(D) such person provides full cooperation,
10 assistance, and facility access to persons au-
11 thorized to conduct response actions at the fa-
12 cility, including the cooperation and access nec-
13 essary for the installation, integrity, operation,
14 and maintenance of any complete or partial re-
15 sponse action at the facility.

16 The President may issue assurances of no enforce-
17 ment action under this Act to such person and may
18 grant such person protection against cost recovery
19 and contribution actions pursuant to section
20 113(f).”.

21 (b) PROSPECTIVE PURCHASER AND WINDFALL
22 LIEN.—

23 (1) IN GENERAL.—Section 107 is amended by
24 inserting after subsection (m) the following new sub-
25 section:

1 “(n) PROSPECTIVE PURCHASER AND WINDFALL
 2 LIEN.—(1) In any case in which there are unrecovered
 3 response costs at a facility for which an owner of the facil-
 4 ity is not liable by reason of subsection (a)(6)(C), and the
 5 conditions described in paragraph (2) are met, the United
 6 States shall have a lien upon such facility for such unre-
 7 covered costs. Such lien—

8 “(A) shall not exceed the increase in fair mar-
 9 ket value of the property attributable to the response
 10 action at the time of a subsequent sale or other dis-
 11 position of property;

12 “(B) shall arise at the time costs are first in-
 13 curred by the United States with respect to a re-
 14 sponse action at the facility;

15 “(C) shall be subject to the requirements for
 16 notice and validity established in paragraph (3) of
 17 subsection (l); and

18 “(D) shall continue until the earlier of satisfac-
 19 tion of the lien or recovery of all response costs in-
 20 curred at the facility.

21 “(2) The conditions referred to in paragraph (1) are
 22 the following:

23 “(A) A response action for which there are un-
 24 recovered costs is carried out at the facility.

1 “(B) Such response action increases the fair
2 market value of the facility above the fair market
3 value of the facility that existed within six months
4 before the response action was taken.”.

5 “(3) No lien under this section shall arise (A) with
6 respect to property for which the property owner preceding
7 the first bona fide prospective purchaser is not a liable
8 party or has resolved its liability under this Act, or (B)
9 where an audit or inquiry gives the bona fide prospective
10 purchaser no knowledge or reason to know of the release
11 of hazardous substances.”.

12 (2) EFFECTIVE DATE AND TRANSITION
13 RULES.—The amendments made by this sub-
14 section—

15 (A) shall take effect with respect to an ac-
16 tion under section 106, 107, or 113 of the
17 Comprehensive Environmental Response, Com-
18 pensation, and Liability Act of 1980 (42 U.S.C.
19 9606, 9607, and 9613) that becomes final on or
20 after October 28, 1997; and

21 (B) shall not apply to an action brought by
22 any person under section 107 or 113 of that
23 Act for costs incurred by the person before Oc-
24 tober 28, 1997.

1 (3) ILLEGAL ACTIVITIES.—Paragraphs (6), (7),
 2 (8), and (9) of section 107(a) of the Comprehensive
 3 Environmental Response, Compensation, and Liabil-
 4 ity Act of 1980 (42 U.S.C. 9607), as added by this
 5 section, shall not apply to any person whose liability
 6 for response costs is based on any act, omission, or
 7 status that is determined by a court or administra-
 8 tive body of competent jurisdiction, within the appli-
 9 cable statute of limitations, to have been in violation
 10 of any Federal or State law pertaining to the treat-
 11 ment, storage, disposal, or handling of hazardous
 12 substances if the violation pertains to a hazardous
 13 substance, the release or threat of release of which
 14 caused the incurrence of response costs at the vessel
 15 or facility concerned.

16 **SEC. 202. EXPEDITED FINAL SETTLEMENTS.**

17 Section 122 is amended as follows:

18 (1) Subsection (g) is amended by striking “(g)”
 19 and all that follows through the end of subparagraph
 20 (A) of paragraph (1) and inserting in lieu thereof
 21 the following:

22 “(g) EXPEDITED FINAL SETTLEMENT.—

23 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-
 24 TLEMENT.—(A) The President shall, as promptly as
 25 possible, offer to reach a final administrative or judi-

1 cial settlement with a potentially responsible party
2 who meets one or more of the following conditions
3 for eligibility for an expedited settlement:

4 “(i) The potentially responsible party’s in-
5 dividual contribution of hazardous substances
6 at the facility is de minimis. The contribution
7 of hazardous substance to a facility by a poten-
8 tially responsible party is de minimis if both of
9 the following conditions are met:

10 “(I) The potentially responsible par-
11 ty’s volumetric contribution of materials
12 containing hazardous substances is mini-
13 mal in comparison to the total volumetric
14 contributions of materials containing haz-
15 ardous substances at the facility; such indi-
16 vidual contribution is presumed to be mini-
17 mal if it is 1 percent or less of the total
18 volumetric contribution at the facility.

19 “(II) The potentially responsible par-
20 ty’s hazardous substances do not present
21 toxic or other hazardous effects that would
22 result in an allocable share of greater than
23 1 percent.”.

24 (2) Subsection (g) is further amended—

1 (A) by redesignating clauses (i), (ii), and
2 (iii) of subparagraph (B) of paragraph (1) as
3 subclauses (I), (II), and (III), respectively;

4 (B) by redesignating subparagraph (B) of
5 paragraph (1) as clause (ii);

6 (C) in the text of clause (ii) (as so redesign-
7 dated), by striking “subparagraph (B)” and in-
8 serting “clause (ii)”; and

9 (D) by adding at the end of paragraph (1)
10 the following:

11 “(iii) The potentially responsible party is a
12 business that, during the taxable year preceding
13 the date of transmittal of notification that the
14 business is a potentially responsible party, had
15 full- and part-time employees whose combined
16 time was equivalent to 30 or fewer full-time em-
17 ployees or for that taxable year reported
18 \$3,000,000 or less in annual gross revenues.

19 “(B) The President may offer to reach a final
20 administrative or judicial settlement with a poten-
21 tially responsible party whose individual contribution
22 of hazardous substances at the facility is small. The
23 contribution of hazardous substance to a facility by
24 a potentially responsible party is small if both of the
25 following conditions are met:

1 “(i) The potentially responsible party’s vol-
2 umetric contribution of materials containing
3 hazardous substances is small in comparison to
4 the total volumetric contributions of materials
5 containing hazardous substances at the facility;
6 such individual contribution is presumed to be
7 small if it is more than 1 percent but less than
8 5 percent of the total volumetric contribution at
9 the facility, unless the Administrator identifies
10 a different threshold based on site-specific fac-
11 tors.

12 “(ii) The potentially responsible party’s
13 hazardous substances do not present toxic or
14 other hazardous effects that would result in an
15 allocable share of more than 1 percent and less
16 than 5 percent.”.

17 (3) Paragraph (2) of subsection (g) is amended
18 to read as follows:

19 “(2) BASIS OF DETERMINATION.—Any person
20 who enters into a settlement pursuant to this sub-
21 section shall provide any information requested by
22 the President or by an allocator in accordance with
23 section 128(i)(1) or section 104(e) of this Act. The
24 determination of whether a person is eligible for an
25 expedited settlement shall be made on the basis of

1 all information available to the President at the time
 2 the determination is made. Neither the President’s
 3 determination as to the eligibility of a party that is
 4 not a department, agency, or instrumentality of the
 5 United States for settlement pursuant to this sec-
 6 tion, nor the terms of the final settlement with such
 7 a party, shall be subject to judicial review. If the
 8 President determines that a party is not eligible for
 9 a settlement pursuant to this section, the President
 10 shall explain the basis for that determination in
 11 writing to any person who requests such a settle-
 12 ment.”.

13 **SEC. 203. ALLOCATION PROCEDURES.**

14 Title I (42 U.S.C. 9621 et seq.) is further amended
 15 by adding at the end the following new section:

16 **“SEC. 128. ALLOCATION OF LIABILITY FOR CERTAIN FA-**
 17 **CILITIES.**

18 “(a) ALLOCATIONS OF LIABILITY.—

19 “(1) DEFINITIONS.—In this section:

20 “(A) ALLOCATED SHARE.—The term ‘allo-
 21 cated share’ means the percentage of liability
 22 assigned to a potentially responsible party by
 23 the allocator in an allocation report.

24 “(B) ALLOCATION PARTY.—(i) The term
 25 ‘allocation party’ means a party, named on a

list of parties issued by an allocator, that will be subject to the allocation process under this section.

“(ii) Any settling party (including a party eligible for an expedited settlement pursuant to section 122(g)) or any party eligible for an exemption or limitation pursuant to section 107(a)(6) shall be considered an allocation party only for purposes of responding to requests for information from the allocator and receiving an allocated share in order to determine the appropriate orphan share pursuant to subsection (h)(4).

“(C) ALLOCATOR.—The term ‘allocator’ means an allocator retained to conduct an allocation for a facility under this section.

“(D) MANDATORY ALLOCATION FACILITY.—The term ‘mandatory allocation facility’ means—

“(i) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after October 28, 1997, and at which there are 2 or more potentially responsible persons (including 1 or more

1 persons that are qualified for an exemption
2 under this Act, if at least 1 potentially re-
3 sponsible person is viable and not entitled
4 to such an exemption; and

5 “(ii) a federally owned vessel or facil-
6 ity listed on the National Priorities List
7 with respect to which response costs are
8 incurred after October 28, 1997, and with
9 respect to which 1 or more potentially re-
10 sponsible parties (other than a department,
11 agency, or instrumentality of the United
12 States) are liable or potentially liable if at
13 least 1 potentially liable party is viable and
14 not entitled to an exemption under this
15 Act.

16 “(E) ORPHAN SHARE.—The term ‘orphan
17 share’ means the total of the allocated shares
18 determined by the allocator under subsection
19 (h)(4).

20 “(2) MANDATORY ALLOCATIONS.—For each
21 mandatory allocation facility involving 2 or more po-
22 tentially responsible parties (including 1 or more po-
23 tentially responsible parties that are qualified for an
24 exemption under this Act), the Administrator shall
25 conduct the allocation process under this section.

1 “(3) REQUESTED ALLOCATIONS.—For a facility
2 (other than a mandatory allocation facility) involving
3 2 or more potentially responsible parties, the Admin-
4 istrator may conduct the allocation process under
5 this section if the allocation is requested in writing
6 by a potentially responsible party that has—

7 “(A) incurred response costs with respect
8 to a response action; or

9 “(B) resolved any liability to the United
10 States with respect to a response action in
11 order to assist in allocating shares among po-
12 tentially responsible parties.

13 “(4) ORPHAN SHARE.—An allocation performed
14 at a vessel or facility identified under paragraph (3)
15 shall not require payment of an orphan share under
16 subsection (h).

17 “(5) LIMITATION OF CERTAIN FACILITIES.—
18 For any response costs within the scope of allocation
19 as defined in paragraph (6) which are subject to a
20 judicial or administrative consent decree or unilat-
21 eral administrative order under section 106 which
22 has been issued, signed, lodged, or entered as of Oc-
23 tober 28, 1997, the following procedures shall apply:

24 “(A) Any person or group of persons sub-
25 ject to the consent decree or unilateral adminis-

1 trative order shall select, with the approval of
2 the Administrator, a neutral third party, who
3 shall make the determination in subparagraph
4 (B).

5 “(B) Within 14 days after the selection of
6 the neutral third party, the person or group of
7 persons shall submit a written presentation
8 which shows that there is at least a \$1,000,000
9 orphan share of the costs yet to be incurred
10 with regard to the response action which is sub-
11 ject to the consent decree or unilateral adminis-
12 trative order.

13 “(C) Within 21 days after the receipt of
14 the written submission, the neutral third party
15 shall make a determination as to whether there
16 is a reasonable belief, based on the information
17 submitted, that the requirement of subpara-
18 graph (B) has been met.

19 “(D) If the requirement of subparagraph
20 (B) is met, an allocation shall be performed for
21 the sole purpose of determining the appropriate
22 orphan share under subsection (h)(4).

23 “(E) The determination by the neutral
24 third party is not reviewable and the cost of

1 this process shall be paid by the person or
2 group of persons seeking the allocation.

3 “(F) Nothing in this paragraph shall effect
4 or limit the obligations of any persons to imple-
5 ment any response action as required by the
6 consent decree or unilateral administrative
7 order.

8 “(6) SCOPE OF ALLOCATIONS.—An allocation
9 under this section shall apply to—

10 “(A) response costs incurred after October
11 28, 1997, with respect to a mandatory alloca-
12 tion facility; and

13 “(B) response costs incurred at a facility
14 that is the subject of a requested allocation
15 under paragraph (3).

16 “(b) MORATORIUM ON COMMENCEMENT OR CON-
17 TINUATION OF SUITS.—

18 “(1) MORATORIUM.—No person may assert any
19 claim for response costs pursuant to section 107 or
20 113 of this Act or commence any civil action seeking
21 recovery of any response costs in connection with a
22 response action for which an allocation is required
23 under subsection (a)(1) or (2), or for which the Ad-
24 ministrator has initiated an allocation under sub-
25 section (a)(3), until 90 days after issuance of the

1 allocator's report under subsection (h) or (m),
2 whichever is later.

3 “(2) STAY OF EXISTING ACTIONS.—If a claim
4 for response costs pursuant to section 107 or 113 of
5 this Act or an action seeking recovery of response
6 costs in connection with a response action for which
7 an allocation is required under subsection (a)(1) or
8 (a)(2), or for which the Administrator has initiated
9 an allocation under subsection (a)(3), is pending—

10 “(A) upon the date of enactment of the
11 Superfund Cleanup Acceleration and Liability
12 Equity Act, or

13 “(B) upon initiation of an allocation,
14 the action or claim shall be stayed until 90 days
15 after the issuance of the allocator's report under
16 subsection (h) or (m), unless the court determines
17 that a stay will result in manifest injustice.

18 “(3) STATUTE OF LIMITATIONS.—Any applica-
19 ble limitations period with respect to a cause of ac-
20 tion subject to paragraph (1) shall be tolled from the
21 earlier of the following until 180 days after the issu-
22 ance of the allocator's report under subsection (h) or
23 (m):

24 “(A) The date of listing of the facility on
25 the National Priorities List.

1 “(B) The commencement of the allocation
2 process pursuant to this section.

3 “(c) COMMENCEMENT OF ALLOCATION.—

4 “(1) RESPONSIBLE PARTY SEARCH.—At all fa-
5 cilities subject to this section, the Administrator
6 shall, as soon as practicable, but not later than 60
7 days after the commencement of the remedial inves-
8 tigation, initiate a thorough investigation and search
9 for all potentially responsible parties, using the au-
10 thorities under section 104. Any person may submit
11 information to the Administrator concerning any po-
12 tentially responsible party at the facility, and the
13 Administrator shall consider such information in
14 carrying out the responsible party search.

15 “(2) NOTIFICATION OF DE MINIMIS PARTIES.—
16 As soon as practicable after receipt of sufficient in-
17 formation, but not more than 12 months after the
18 commencement of the remedial investigation, the
19 Administrator shall take each of the following ac-
20 tions:

21 “(A) The Administrator shall notify any
22 potentially responsible party who the Adminis-
23 trator determines is eligible for an expedited
24 final settlement in accordance with section
25 122(g)(1)(A) of its eligibility, based on informa-

tion available to the Administrator at the time the determination is made. Any such information that is not confidential shall, to the extent practicable, be made available by the Administrator to the party at the time of the settlement offer.

“(B) The Administrator shall submit a written settlement offer to each party notified under subparagraph (A) no later than 60 days after such notification. The Administrator shall, at the same time, make available to such party upon request any nonconfidential information related to the party’s settlement upon which the Administrator based the settlement offer. If the settlement offer is based in whole or in part on confidential information, the Administrator shall so advise such party.

“(3) PRELIMINARY NOTICE TO OTHER PARTIES.—As soon as practicable after receipt of sufficient information, but not later than 18 months after commencement of the remedial investigation, the Administrator shall—

“(A) notify any party not previously notified under paragraph (2) who the Administrator determines is eligible for an expedited

1 final settlement in accordance with section
2 122(g)(1)(A) of its eligibility, based on informa-
3 tion available to the Administrator at the time
4 the determination is made;

5 “(B) issue a list of all potentially respon-
6 sible parties preliminarily identified by the Ad-
7 ministrator to all such parties;

8 “(C) notify the public, in accordance with
9 section 117(d), of the list of potentially respon-
10 sible parties identified pursuant to subpara-
11 graphs (A) and (B) by the Administrator; and

12 “(D) make available all responses to the
13 Administrator’s information requests, as well as
14 other relevant information concerning the facil-
15 ity and potentially responsible parties, to the
16 notified parties, to the extent it is available to
17 the Administrator.

18 The Administrator shall not make available any
19 privileged or confidential information, except as oth-
20 erwise authorized by law. The Administrator shall
21 take the actions specified in this paragraph within 9
22 months after the date of enactment of this section
23 for all facilities eligible for allocation under sub-
24 section (a)(1) or (a)(2) for which the responsible
25 party search required by a paragraph (1) was sub-

1 stantially complete prior to the date of the enact-
2 ment of this section.

3 “(4) STATUS OF PARTIES.—At the time of pro-
4 posing the list of potentially responsible parties
5 under paragraph (3), the Administrator shall—

6 “(A) identify parties that are eligible for
7 expedited settlement pursuant to section
8 122(g);

9 “(B) identify parties who are not eligible
10 for such expedited settlement; or

11 “(C) determine that there is insufficient
12 information to ascertain whether or not the
13 party is eligible for such expedited settlement.

14 “(5) NOMINATION OF PARTIES.—(A) For 60
15 days after information has been made available pur-
16 suant to paragraph (3), the parties identified by the
17 Administrator and members of the affected commu-
18 nity shall have the opportunity to identify and nomi-
19 nate additional potentially responsible parties or oth-
20 erwise provide information relevant to the facility or
21 such potentially responsible parties. This period may
22 be extended by the Administrator for an additional
23 30 days upon request of any person.

24 “(B) Any proposal for the addition of any po-
25 tentially responsible party with respect to a facility

1 shall be supported by a statement setting forth the
2 basis in law and fact for the nominating party's be-
3 lief that the additional nominated party is poten-
4 tially liable under this Act and by full disclosure to
5 the Administrator and to the nominated party at the
6 same time of all available information concerning
7 that party's liability under this Act and that party's
8 contribution of hazardous substances to the facility.
9 The nominated party may submit to the Adminis-
10 trator information relating to its inclusion as an ad-
11 ditional potentially responsible party within 45 days
12 of the receipt of such information.

13 “(6) LIST OF ALLOCATION PARTIES.—(A)
14 Within 60 days after the end of the period specified
15 in paragraph (5)(A) for the proposal of additional
16 parties, the Administrator shall—

17 “(i) issue a list of parties subject to the al-
18 location process (hereinafter referred to in this
19 section as the ‘allocation parties’);

20 “(ii) identify in writing, as to each of the
21 proposed additional parties, which parties the
22 Administrator has determined, in the Adminis-
23 trator's sole discretion—

24 “(I) to be eligible for expedited settle-
25 ment pursuant to section 122(g),

1 “(II) not to be eligible for such expedited settlement, and

2
3 “(III) for whom insufficient information exists to determine whether or not the
4 party is eligible for such expedited settlement; and

5
6
7 “(iii) identify (in writing supported by
8 brief explanation) those parties as to which the
9 Administrator has determined, in the Administrator’s sole discretion, that there is an inadequate basis in law or fact to determine that
10 the party is liable under this Act.

11
12
13 The Administrator shall consider, when making determinations under this subparagraph, all available
14 information provided pursuant to paragraph (5)(B).
15 For each party identified under clause (iii), the Administrator shall further identify whether that party,
16 if liable, would be eligible for an expedited settlement.
17
18
19

20 “(B) At the time of issuance of the list of parties provided for in subparagraph (A), the Administrator shall provide the potentially responsible parties who received notice under this paragraph with
21 a list of neutral parties who are not employees of the
22 United States and who the Administrator deter-

1 mines, in the Administrator's sole discretion, are
2 qualified to perform an allocation at the facility.

3 “(C) Any party the Administrator identifies as
4 potentially liable and eligible for expedited settle-
5 ment pursuant to this section, shall only be required
6 to respond to information requests from the allo-
7 cator and shall only be assigned a share in the allo-
8 cation to the extent required to determine the or-
9 phan share pursuant to subsection (h), unless that
10 party fails to reach an agreement on settlement
11 terms with the President within 30 days after the
12 offer.

13 “(D) The Administrator's determinations for
14 purposes of this subsection shall not be subject to
15 judicial review, nor shall any determination or expla-
16 nation provided for purposes of the allocation be ad-
17 missible for any purpose in an action commenced by
18 the United States against the party that is the sub-
19 ject of the determination or any other party.

20 “(E) The allocator may assign a zero share to
21 any party the allocator determines should receive
22 such a share in consideration of the allocation fac-
23 tors including the Administrator's determinations
24 under subparagraph (C).

1 “(F) If a party is included in the allocation
2 pursuant to the nomination of a potentially respon-
3 sible party pursuant to subsection (c)(5), but as-
4 signed a zero share by the allocator, that party’s
5 costs of participating in the allocation (including
6 reasonable attorneys’ fees) shall be borne by the
7 party who proposed the addition of the party to the
8 allocation.

9 “(d) DE MINIMIS SETTLEMENT OFFER.—(1) Within
10 30 days after the final list of parties is issued pursuant
11 to paragraph (6) of subsection (c), the Administrator shall
12 submit a written settlement offer to any party identified
13 as a potentially responsible party pursuant to this section
14 who the Administrator has determined to be eligible for
15 an expedited final settlement in accordance with section
16 122(g)(1)(A), and who has not entered into a settlement
17 with the United States regarding the matters being ad-
18 dressed by the allocation. The Administrator shall, at the
19 same time, make available to such party upon request any
20 nonconfidential information related to the party’s settle-
21 ment.

22 “(2) The President shall not include any premia pur-
23 suant to section 122(g) in a settlement offer made pursu-
24 ant to paragraph (1) more than 60 days after the date
25 the offer is required to be made pursuant to paragraph

1 (1) to a party that is a business which had full- and part-
2 time employees whose combined time was equivalent to
3 100 or fewer employees during the taxable year preceding
4 the date that the party received notification that the party
5 was eligible for an expedited settlement.

6 “(e) SELECTION OF ALLOCATOR.—

7 “(1) PROPOSAL OF ADDITIONAL CAN-
8 DIDATES.—Any party identified by the Adminis-
9 trator under subsection (c) may propose any person
10 whom such party deems qualified for selection as an
11 allocator in addition to those proposed from the list
12 provided under subsection (c)(6)(B).

13 “(2) SELECTION OF ALLOCATOR BY ALLOCA-
14 TION PARTIES.—The allocation parties shall select
15 an allocator from the list of allocators proposed by
16 the Administrator or under paragraph (1) by the fol-
17 lowing voting method with each allocation party hav-
18 ing a single vote:

19 “(A) Each allocation party, with the Ad-
20 ministrator voting for the identified but insol-
21 vent or defunct parties, shall numerically rank
22 the individuals on the final list of proposed
23 allocators, with a ranking of 1 indicating first
24 preference, and forward its vote to the Adminis-
25 trator within 30 days of the issuance of the

1 final list of allocators pursuant to subsection
2 (c)(6)(B).

3 “(B) The proposed allocator who receives
4 the lowest combined numerical score, taking
5 into account all votes submitted to the Adminis-
6 trator pursuant to clause (i), and who agrees to
7 serve as allocator, shall be the allocator.

8 “(3) SELECTION OF ALLOCATOR BY EPA.—If
9 the allocation parties do not select an allocator pur-
10 suant to this subsection within 30 days after receipt
11 of the list provided under paragraph (2), the Admin-
12 istrator shall select the allocator, except that if the
13 Administrator rejects 4 or more allocators selected
14 by the allocation parties, the Administrator shall ini-
15 tiate a new allocator selection process under this sec-
16 tion.

17 “(f) CONTRACT.—Following selection of the allocator,
18 the Administrator shall enter into a contract with the se-
19 lected allocator for the provision of allocation services for
20 the facility concerned, and immediately make available all
21 responses to information requests, as well as other rel-
22 evant information concerning the facility and potentially
23 responsible parties, to the allocator. The Administrator
24 has the authority to use the procedures set forth in section
25 109(e) to obtain the services of a neutral professional for

1 use in conducting allocation procedures under this section,
2 whether or not the neutral professional actually conducts
3 such allocation procedures.

4 “(g) POTENTIALLY RESPONSIBLE PARTY SETTLE-
5 MENT.—At any time prior to the issuance of an allocation
6 report as described in subsection (h), any group of poten-
7 tially responsible parties may submit to the allocator a pri-
8 vate allocation. If such private allocation meets all of the
9 following criteria, the allocator shall promptly adopt it as
10 the allocation report:

11 “(1) The private allocation is a binding alloca-
12 tion of 95 percent of the future recoverable response
13 costs at issue under subsection (a).

14 “(2) The private allocation does not allocate
15 any share of response costs to any person who is not
16 a signatory to the proposed private allocation or, in
17 the case of any orphan share, unless the United
18 States (and, where applicable, the State) is a signa-
19 tory to the proposed private allocation.

20 “(3) The signatories to the proposed private al-
21 location waive their contribution rights with respect
22 to the response costs subject to the allocation
23 against all other potentially responsible parties at
24 the facility.

25 “(h) ALLOCATION DETERMINATION.—

1 “(1) SETTLEMENT AND ALLOCATION RE-
2 PORT.—Following issuance of the list of allocation
3 parties pursuant to subsection (c)(6)(A)(i), the allo-
4 cator shall initiate and conduct an allocation process
5 that shall culminate in the issuance of a written re-
6 port, with a nonbinding, equitable allocation of the
7 percentage shares of responsibility of all allocation
8 parties, including the orphan share, for response
9 costs at the facility within the scope of the alloca-
10 tion, and provide such report to the allocation par-
11 ties and the Administrator. The allocator shall pro-
12 vide the report to the allocation parties and the Ad-
13 ministrator within 180 days of the issuance of the
14 list of allocation parties pursuant to subsection
15 (c)(6) or the date of the contract for allocation serv-
16 ice pursuant to subsection (f), whichever is later.
17 Upon request, for good cause shown, the Adminis-
18 trator may grant the allocator additional time to
19 complete the allocation, not to exceed 90 days.

20 “(2) FACTORS IN THE ALLOCATION.—The allo-
21 cator shall prepare a nonbinding, equitable allocation
22 of percentage shares for the facility based on the fol-
23 lowing factors:

24 “(A) The amount of hazardous substances
25 contributed by each allocation party.

1 “(B) The degree of toxicity of hazardous
2 substances contributed by each allocation party.

3 “(C) The mobility of hazardous substances
4 contributed by each allocation party.

5 “(D) The degree of involvement of each al-
6 location party in the generation, transportation,
7 treatment, storage, or disposal of the hazardous
8 substance.

9 “(E) The degree of care exercised by each
10 allocation party with respect to the hazardous
11 substance, taking into account the characteris-
12 tics of the hazardous substance.

13 “(F) The cooperation of each allocation
14 party in contributing to the response action and
15 in providing complete and timely information
16 during the allocation process.

17 “(G) Such other factors that the Adminis-
18 trator determines are appropriate by published
19 guidance. Any such guidance shall be consistent
20 with this Act and shall be published only after
21 notice and opportunity for public comment. An
22 alleged failure of the allocator to consider 1 or
23 more additional factors set forth in such guid-
24 ance shall not be deemed unlawful conduct or

1 procedural error for purposes of subsection
2 (1)(1)(B).

3 “(3) CONDUCT OF ALLOCATION PROCESS.—The
4 allocator shall conduct the allocation process and
5 render a decision based solely on the provisions of
6 this section, including the allocation factors specified
7 in paragraph (2). Each party to the allocation shall
8 be afforded an opportunity to be heard (either orally
9 or in writing, at the allocator’s discretion), and an
10 opportunity to comment on a draft allocation report.
11 The allocator shall not be required to respond to
12 comments.

13 “(4) IDENTIFICATION OF ORPHAN SHARES.—

14 “(A) COMPONENTS OF ORPHAN SHARE.—

15 The allocator may determine that a percentage
16 share for the facility is specifically attributable
17 to an orphan share. The orphan share shall
18 consist only of the following:

19 “(i) Shares attributable to hazardous
20 substances that the allocator determines,
21 on the basis of information presented, to
22 be specifically attributable to identified but
23 insolvent or defunct allocation parties who
24 are not affiliated with any viable allocation
25 party.

1 “(ii) The difference between the ag-
2 gregate shares that the allocator deter-
3 mines are attributable to an allocation
4 party and the aggregate share actually
5 paid by that party (other than a party en-
6 titled to the exemption in section
7 107(a)(6)(B)) if the liability of the party is
8 eliminated or limited by any provision of
9 this Act.

10 “(iii) The difference between the ag-
11 gregate share that the allocator deter-
12 mines, on the basis of information pre-
13 sented, to be specifically attributable to al-
14 location parties who settled with the Unit-
15 ed States before completion of the alloca-
16 tion and the share actually assumed by
17 those parties in any settlements with the
18 United States.

19 “(B) UNATTRIBUTABLE SHARES.—Shares
20 attributable to hazardous substances that the
21 allocator cannot attribute to any identified
22 party shall be distributed among the allocation
23 parties, including the orphan share, in accord-
24 ance with the allocated share assigned to each.

1 “(5) COSTS INCURRED BEFORE OCTOBER 28,
2 1997.—An allocated share received by a person shall,
3 at the person’s discretion, be binding on any action
4 or claim for response costs incurred before October
5 28, 1997, under section 113 if such action or claim
6 has not become final as of October 28, 1997.

7 “(i) ANSWERS AND CERTIFICATIONS TO
8 ALLOCATOR’S INFORMATION REQUESTS.—

9 “(1) SUBPOENAS AND INFORMATION RE-
10 QUESTS.—Where necessary to assist in determining
11 the allocation of shares, the allocator may request
12 information or documents from any allocation party
13 in accordance with paragraphs (2) or (5) of section
14 104(e), and require by subpoena the attendance of
15 persons or the production of documents, or other in-
16 formation in accordance with section 104(e)(7). Any
17 allocation party to whom a request is directed shall
18 include in the response a certification by a respon-
19 sible representative or authorized representative that
20 satisfies the requirement of section 104(e)(3). The
21 allocator may also request the Administrator to uti-
22 lize the authorities of paragraph (2) and to exercise
23 any information-gathering authority of the Adminis-
24 trator under this Act.

1 “(2) POWERS OF THE ALLOCATOR.—In addi-
2 tion to the information-gathering authority set forth
3 in paragraph (1), the allocator shall have the au-
4 thority to schedule meetings and require the attend-
5 ance of allocation parties at such meetings; to re-
6 quire that allocation parties wishing to present simi-
7 lar legal or factual positions consolidate their pres-
8 entations; to obtain or employ support services, in-
9 cluding secretarial and clerical services, computer
10 support services, and legal and investigative services;
11 and to take any other actions necessary to conduct
12 a fair, efficient, and impartial allocation process.

13 “(j) CIVIL AND CRIMINAL PENALTIES.—

14 “(1) CIVIL PENALTIES.—Where the allocator is-
15 sues an administrative subpoena or information re-
16 quest pursuant to subsection (i), a party who unrea-
17 sonably fails to comply with the subpoena or request
18 shall be subject to a civil penalty not to exceed
19 \$25,000 for each day of noncompliance.

20 “(2) ENFORCEMENT.—The allocator may seek
21 enforcement of an administrative subpoena or infor-
22 mation request pursuant to subsection (i)(1), and
23 shall seek such enforcement by requesting that the
24 Attorney General commence an action to enforce the
25 subpoena or request. The Attorney General, within

1 30 days after receiving such request from the allo-
2 cator, shall—

3 “(A) notify the allocator that the Attorney
4 General will commence an action to enforce the
5 subpoena or information request;

6 “(B) notify the allocator that the Attorney
7 General will not seek enforcement of the sub-
8 poena or request because the subpoena or re-
9 quest is barred by law or would result in annoy-
10 ance, embarrassment, oppression, or undue bur-
11 den or expense to the party to whom it was is-
12 sued; or

13 “(C) notify the allocator that the Attorney
14 General has insufficient information on which
15 to determine whether an enforcement action is
16 appropriate.

17 “(3) FAILURE OF ATTORNEY GENERAL TO RE-
18 SPOND.—If the Attorney General fails to provide
19 any response to the allocator within 30 days of a re-
20 quest for enforcement of a subpoena or information
21 request, the allocator may retain counsel to com-
22 mence a civil action to enforce the subpoena or in-
23 formation request.

24 “(4) PENALTY.—If the Attorney General or al-
25 locator prevails in an action to enforce an allocator’s

1 subpoena or information request, the party who
2 failed to comply shall be subject to a sanction that
3 may include civil penalties as provided in paragraph
4 (1). The court shall require such party to pay the
5 reasonable expenses, including attorney's fees,
6 caused by the failure to comply, unless the court
7 finds that the failure was substantially justified or
8 that other circumstances make an award of expenses
9 unjust.

10 “(5) CRIMINAL.—Any person who knowingly
11 and willfully makes any false material statement or
12 representation in the response to an allocator's in-
13 formation request or subpoena issued pursuant to
14 subsection (i) shall be deemed to have made a false
15 statement on a matter within the jurisdiction of the
16 United States within the meaning of section 1001 of
17 title 18, United States Code.

18 “(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

19 “(1) DOCUMENT REPOSITORY.—The allocator
20 shall establish and maintain a document repository
21 containing copies of all documents and informa-
22 tion—

23 “(A) provided by the Administrator pursu-
24 ant to this section,

1 “(B) provided or generated by the alloca-
2 tion parties, or

3 “(C) generated by the allocator during the
4 allocation.

5 The documents and information in the document re-
6 pository shall be available only to the parties to the
7 allocation process for review and copying at their
8 own expense, subject to the confidentiality provisions
9 of paragraph (2). The Administrator shall provide to
10 the allocator all information obtained under section
11 104(e), including information entitled to protection
12 under section 1905 of title 18, United States Code,
13 or exempt from disclosure pursuant to section
14 552(a) of title 5, United States Code. An allocation
15 party shall not assert any privilege as a basis for
16 withholding any information from the allocator.

17 “(2) CONFIDENTIALITY.—All documents and
18 materials submitted to the allocator or placed in the
19 document repository, together with the record of any
20 information generated or obtained during the alloca-
21 tion process, shall be confidential. The allocator,
22 each allocation party, the Administrator, and the At-
23 torney General shall maintain such documents and
24 materials, together with the record of any informa-
25 tion generated or obtained during the allocation, as

1 confidential and are prohibited from using any such
2 material in any other matter or proceeding, and
3 shall not be subject to disclosure under section 552
4 of title 5, United States Code. Such material shall
5 not be discoverable or admissible in any other Fed-
6 eral, State, or local judicial or administrative pro-
7 ceedings, except—

8 “(A) a new allocation pursuant to sub-
9 section (m) or (n) for the same remedial action,
10 or

11 “(B) an initial allocation for a different re-
12 medial action at the same facility.

13 Nothing in this section shall be construed to author-
14 ize any person, including the allocator, to withhold
15 any documents or information from Congress, or any
16 duly authorized Committee thereof, or limit in any
17 manner the right of Congress, or any duly author-
18 ized Committee thereof, to obtain such documents or
19 information. Any person disclosing such documents
20 or information to Congress shall notify the person
21 who produced such documents or information of the
22 fact of such disclosure pursuant to paragraph (5).

23 “(3) DISCOVERABILITY AND ADMISSIBILITY.—
24 Notwithstanding the foregoing, if the original of any
25 document or material submitted to the allocator or

1 placed in the document repository was, in the hands
2 of the party which provided it, otherwise discover-
3 able or admissible, then such original document, if
4 subsequently sought from such party, shall remain
5 so. If a fact generated or obtained during the alloca-
6 tion was, in the hands of a witness, otherwise discov-
7 erable or admissible, then such fact, if subsequently
8 sought from such other party, shall remain so.

9 “(4) NO WAIVER OF PRIVILEGE.—The submis-
10 sion of, documents, or information pursuant to the
11 allocation process shall not be deemed to be a waiver
12 of any privilege, applicable to such documents or in-
13 formation under any Federal or State law or rule of
14 discovery or evidence.

15 “(5) PROCEDURE WHEN DISCOVERY IS
16 SOUGHT.—Any person, including the United States
17 and any Federal, State, or local agency, department
18 or instrumentality, receiving any request for a state-
19 ment, document, or material submitted, or for the
20 record of any allocation proceeding, shall promptly
21 notify the person who originally submitted such item
22 and, except in the case of a request from the Con-
23 gress or a duly authorized committee thereof, shall
24 provide such submitting person the opportunity to
25 assert and defend the confidentiality of such item.

1 No person shall release or provide a copy of the item
2 to any person not a party to such allocation, other
3 than the Congress or a duly authorized committee
4 thereof, except as may be required by court order.

5 “(6) CIVIL PENALTY FOR VIOLATION OF CON-
6 FIDENTIALITY.—Any person who fails to maintain
7 the confidentiality of any statements, documents or
8 information generated or obtained during an alloca-
9 tion proceeding, or who releases any such informa-
10 tion in violation of this section shall be subject to
11 civil penalties of up to \$25,000 per violation. Such
12 penalties may be sought in a civil action initiated by
13 the Attorney General on behalf of the United States,
14 or any allocation party adversely affected by the fail-
15 ure to maintain confidentiality.

16 “(1) REJECTION OF ALLOCATION REPORT.—

17 “(1) REJECTION.—The Administrator and the
18 Attorney General may jointly reject a report issued
19 by an allocator only if the Administrator and the At-
20 torney General jointly publish, not later than 180
21 days after the Administrator receives the report, a
22 written determination that—

23 “(A) no rational interpretation of the facts
24 before the allocator, in light of the factors re-
25 quired to be considered, would form a reason-

1 able basis for the shares assigned to the parties;
2 or

3 “(B) the allocation process was directly
4 and substantially affected by bias, procedural
5 error, fraud, or unlawful conduct.

6 “(2) FINALITY.—A report issued by an allo-
7 cator may not be rejected after the date that is 180
8 days after the date on which the United States ac-
9 cepts a settlement offer (excluding an expedited set-
10 tlement under section 122) based on the allocation.

11 “(3) JUDICIAL REVIEW.—Any determination by
12 the Administrator or the Attorney General under
13 this subsection shall not be subject to judicial review
14 unless 2 successive allocation reports relating to the
15 same response action are rejected, in which case any
16 allocation party may obtain judicial review of the
17 second rejection in a United States district court
18 under subchapter II of chapter 5 of part I of title
19 5, United States Code.

20 “(4) DELEGATION.—The authority to make a
21 determination under this subsection may not be dele-
22 gated to any officer or employee below the level of
23 an Assistant Administrator or Acting Assistant Ad-
24 ministrator or an Assistant Attorney General or Act-

1 ing Assistant Attorney General with authority for
2 implementing this Act.

3 “(m) SECOND AND SUBSEQUENT ALLOCATIONS.—

4 “(1) IN GENERAL.—If a report is rejected
5 under subsection (l), the allocation parties shall se-
6 lect an allocator to perform, on an expedited basis,
7 a new allocation based on the same record available
8 to the previous allocator.

9 “(2) MORATORIUM AND TOLLING.—The mora-
10 torium and tolling provisions of subsection (c) shall
11 be extended until the date that is 180 days after the
12 date of the issuance of any second or subsequent al-
13 location report under paragraph (1).

14 “(3) SAME ALLOCATOR.—The allocation parties
15 may select the same allocator who performed 1 or
16 more previous allocations at the facility, except that
17 the Administrator may determine that an allocator
18 whose previous report at the same facility has been
19 rejected under subsection (l) is unqualified to serve.

20 “(n) SETTLEMENTS BASED ON ALLOCATIONS.—

21 “(1) DEFINITION.—In this subsection, the term
22 ‘all settlements’ includes any orphan share allocated
23 under subsection (h).

24 “(2) IN GENERAL.—Unless an allocation report
25 is rejected under subsection (l), any allocation party

1 at a mandatory allocation facility (including an allo-
2 cation party whose allocated share is funded par-
3 tially or fully by orphan share funding under sub-
4 section (h)) shall be entitled to resolve the liability
5 of the party to the United States for response ac-
6 tions subject to allocation if, not later than 90 days
7 after the date of issuance of a report by the allo-
8 cator, the party—

9 “(A) offers to settle with the United States
10 based on the allocated share specified by the al-
11 locator; and

12 “(B) agrees to the other terms and condi-
13 tions stated in this subsection.

14 “(3) SETTLEMENT PROVISIONS.—Settlements
15 based on allocated shares shall include each of the
16 following:

17 “(A) A waiver of contribution rights
18 against all parties who are potentially respon-
19 sible parties for the response costs which are
20 subject to the allocation, as well as a waiver of
21 any rights to challenge any settlement the
22 President enters into with any other potentially
23 responsible party.

24 “(B) Covenants not to sue, consistent with
25 section 122(f), and provisions regarding per-

1 formance or adequate assurance of performance
2 of response actions addressed in the settlement.

3 “(C) A premium determined on a site spe-
4 cific basis and subject to the limitations set
5 forth in paragraph (4)(A), that compensates for
6 the United States litigation risk with respect to
7 potentially responsible parties who have not re-
8 solved their liability to the United States, ex-
9 cept that—

10 “(i) no such premium shall apply if all
11 parties settle or the settlement covers 100
12 percent of response costs; and

13 “(ii) part of the premium amount
14 shall be reimbursed in accordance with
15 paragraph (4)(B) if the United States re-
16 covers costs as described in that para-
17 graph.

18 “(D) Contribution protection, consistent
19 with section 113(f), regarding matters ad-
20 dressed in the settlement. Such settlement does
21 not discharge any of the other potentially re-
22 sponsible parties unless its terms so provide,
23 but it reduces the potential liability of the oth-
24 ers by the amount of the settlement.

1 “(E) Provisions through which the settling
2 parties shall receive reimbursement from the
3 Fund for any response costs which are subject
4 to the allocation incurred by such parties in ex-
5 cess of the aggregate of their allocated share
6 and any premia required by the settlement.
7 Such right to reimbursement shall not be con-
8 tingent on the United States recovery of re-
9 sponse costs from any responsible person not a
10 party to any settlement with the United States.

11 “(4) PREMIUM PROVISIONS.—

12 “(A) PREMIUM LIMITATIONS.—(i) The pre-
13 mium authorized by paragraph (3)(C) for litiga-
14 tion risk shall not exceed the following:

15 “(I) Five percent of the total costs as-
16 sumed by a settling party, where settle-
17 ments (and any orphan share identified by
18 the allocator) account for 80 percent or
19 more of responsibility at the facility.

20 “(II) Ten percent of the total costs
21 assumed by a settling party, where settle-
22 ments (and any orphan share identified by
23 the allocator) account for more than 60
24 percent and less than 80 percent of re-
25 sponsibility at the facility.

1 “(III) Fifteen percent of the total
2 costs assumed by a settling party, where
3 settlements (and any orphan share identi-
4 fied by the allocator) account for more
5 than 40 percent and less than 60 percent
6 of responsibility at the facility.

7 “(IV) Twenty percent of the total
8 costs assumed by a settling party, where
9 settlements (and any orphan share identi-
10 fied by the allocator) account for 40 per-
11 cent or less of responsibility at the facility.

12 “(ii) The Administrator shall have author-
13 ity to promulgate regulations to modify the
14 premium percentages established in this subpara-
15 graph. The Administrator may not propose a
16 rule before the date 36 months after the enact-
17 ment of this section, and no such rule may take
18 effect before the date 48 months after the en-
19 actment of this section. Such rule must be
20 based upon an administrative record establish-
21 ing that such modification is necessary to re-
22 flect actual experience regarding the litigation
23 risk faced by the United States in proceeding
24 against nonsettling parties under this section.

1 “(B) PREMIUM REIMBURSEMENT.—(i) In
2 a case in which an allocation party has entered
3 into a settlement under this subsection and has
4 paid a premium in accordance with the limita-
5 tions in subparagraph (A), if the total amount
6 of response costs recovered by the United
7 States after the date of the settlement exceeds
8 the total amount that settlements (and any or-
9 phan share identified by the allocator) ac-
10 counted for in applying the limitations in sub-
11 paragraph (A), then the United States shall re-
12 imburse part of the premium paid by the alloca-
13 tion party in accordance with clause (ii).

14 “(ii) The United States shall reimburse an
15 allocation party subject to clause (i) an amount
16 equal to one-half of the difference between—

17 “(I) the premium actually paid by the
18 allocation party; and

19 “(II) the premium that would have
20 been paid by the allocation party had the
21 total amount of response costs recovered
22 by the United States after the date of the
23 settlement been used in applying the limi-
24 tations in subparagraph (A).

1 “(5) AUTHORIZATION OF REIMBURSEMENT.—

2 In any settlement in which a party agrees to per-
3 form response work in excess of its share, the Ad-
4 ministrator shall have authority to carry out the Ad-
5 ministrator’s duty to reimburse settling parties
6 under this section pursuant to such reasonable pro-
7 cedures as the Administrator may prescribe.

8 “(6) REIMBURSEMENT CLAIMS.—The Adminis-
9 trator shall require all claims for reimbursement to
10 be supported by—

11 “(A) documentation of actual costs in-
12 curred; and

13 “(B) sufficient information to enable the
14 Administrator to determine whether such costs
15 were reasonable.

16 “(7) SITE-SPECIFIC ACCOUNTS.—If, as part of
17 any settlement agreement under this subsection, a
18 potentially responsible party will be paying amounts
19 to the President for carrying out any response action
20 at a particular vessel or facility, the President shall
21 retain such amounts in specific interest-bearing ac-
22 counts, and use such amounts, together with accrued
23 interest, to conduct or enable other persons to con-
24 duct the response action at the vessel or facility.

25 “(o) POST-ALLOCATION LITIGATION.—

1 “(1) IN GENERAL.—The United States may
2 commence an action under section 107 against any
3 person liable under that section who has not resolved
4 its liability to the United States following allocation,
5 on or after 90 days following issuance of the
6 allocator’s report. In any such action, such person
7 shall be liable in accordance with section 107 for all
8 response costs not recovered through settlements
9 with other persons. Such recoverable costs shall in-
10 clude any federally funded orphan share identified in
11 accordance with subsection (h), but shall not include
12 any shares allocated to Federal, State, or local gov-
13 ernmental agencies, departments, or instrumental-
14 ities. Defendants in any such action may implead
15 only allocation parties who did not resolve their li-
16 ability to the United States. The Administrator and
17 the Attorney General shall issue guidelines to ensure
18 that the relief sought against de minimis parties
19 under principles of joint and several liability will not
20 be grossly disproportionate to their contribution to
21 the facility. The application of such guidelines is
22 committed to the discretion of the Administrator
23 and the Attorney General.

24 “(2) CERTIFICATION.—In commencing any ac-
25 tion under section 107 following allocation, the At-

1 torney General must certify, in the complaint, that
2 the United States has been unable to reach a settle-
3 ment that would be in the best interests of the Unit-
4 ed States. This certification shall not be subject to
5 judicial review.

6 “(3) DEFENDANTS.—No person may commence
7 an action under section 107 or otherwise seek con-
8 tribution for response costs which are subject to the
9 allocation against any person who was not identified
10 as an allocation party pursuant to subsection (c) or
11 subsequently identified as a potentially liable party.

12 “(4) ADMISSIBILITY OF ALLOCATOR’S RE-
13 PORT.—The allocator’s report shall not be admissi-
14 ble in any court for any purpose, except as set forth
15 in this section. The allocator’s report, subject to the
16 rules and discretion of the court, may be admissible
17 solely for the purpose of assisting the court in mak-
18 ing an equitable allocation of response costs among
19 the relative shares of nonsettling liable parties.

20 “(5) COSTS OF ALLOCATION PROCEDURE ON
21 ORPHAN SHARE INCLUDED AS COSTS OF RE-
22 SPONSE.—The costs of implementing the allocation
23 procedure set forth in this section, including reason-
24 able fees and expenses of the allocator, shall be con-

1 sidered necessary costs of response for purposes of
2 this Act.

3 “(6) REJECTION OF SHARE DETERMINATION.—

4 In any action by the United States under this title,
5 if the United States has rejected an offer of settle-
6 ment that is consistent with subsection (n) and that
7 was presented to the United States prior to the expi-
8 ration of the moratorium period set forth in sub-
9 section (b), the offeror shall be entitled to recover
10 from the United States the offeror’s reasonable costs
11 of defending the action after the making of the offer
12 (including reasonable attorneys’ fees) if the ultimate
13 resolution of liability or allocation of costs with re-
14 spect to the offeror (taking into account all settle-
15 ments and reimbursements with respect to the facil-
16 ity other than those attributable to insurance or in-
17 demnification), is as, or more, favorable to the
18 offeror than the offer based on the allocation.

19 “(p) UAO PERFORMANCE.—

20 “(1) REIMBURSEMENT.—Any allocation party
21 who satisfactorily performs work under an adminis-
22 trative order issued under section 106(a) after the
23 issuance of an allocation report shall be entitled to
24 the reasonable and necessary costs of work in excess
25 of their allocated share, provided that the party—

1 “(A) agrees not to contest liability for all
2 response costs not inconsistent with the Na-
3 tional Contingency Plan to the extent of the al-
4 located share;

5 “(B) agrees that its reimbursement shall
6 be reduced by an amount equal to the maxi-
7 mum litigation risk premium provided for in
8 subsection (n)(4) based on the total allocated
9 shares of the allocation parties who have not
10 reached settlements with the United States by
11 the end of the moratorium on commencement of
12 actions provided in subsection (b); and

13 “(C) waives contribution rights against all
14 parties who are potentially responsible parties
15 for the response action, as well as waives any
16 rights to challenge any settlement the President
17 enters into with any other potentially respon-
18 sible party.

19 “(2) OFFSET.—Any and all reimbursement pro-
20 vided to a performing party for work in excess of its
21 share is subject to equitable offset or reduction by
22 the Administrator upon a finding of a failure to per-
23 form any aspect of the remedy in a proper and time-
24 ly manner.

1 “(3) TIME OF PAYMENT.—Any and all reim-
2 bursement to a performing party for work in excess
3 of its share shall be paid after work is completed,
4 but no sooner than completion of the construction of
5 the remedial action.

6 “(4) REIMBURSEMENT CLAIMS.—The Adminis-
7 trator shall require that all claims for reimburse-
8 ment be supported by—

9 “(A) documentation of actual costs in-
10 curred; and

11 “(B) sufficient information to enable the
12 Administrator to determine whether such costs
13 were reasonable.

14 “(5) INDEPENDENT AUDITING.—The Adminis-
15 trator may require independent auditing of any
16 claim for reimbursement.

17 “(6) BAR.—An administrative order under sec-
18 tion 106(a) shall be in lieu of any action by the
19 United States or any other person against the allo-
20 cation party for recovery of response costs in connec-
21 tion with the response action, or for a contribution
22 toward the costs of the response action that is sub-
23 ject to the allocation process under this section.

24 “(q) FUNDING OF ORPHAN SHARES.—

1 “(1) LIMITATION ON OBLIGATIONS.—For each
2 settlement agreement entered into pursuant to sub-
3 section (n) that includes an orphan share, and for
4 each unilateral administrative order where the per-
5 son satisfies the requirements of subsection (p), the
6 United States shall reimburse the allocation parties,
7 including any Federal agency, for costs incurred and
8 equitably attributable to the orphan share. In no
9 case shall the United States obligate for such costs
10 and interest determined under paragraph (3) in ex-
11 cess of \$ in any fiscal year, plus any re-
12 maining unobligated balance of funds made available
13 under paragraph (2) from previous fiscal years. The
14 mandate to the United States to make obligations
15 and payments under this paragraph constitutes an
16 entitlement to those parties eligible to receive those
17 payments.

18 “(2) AUTHORIZATION.—There are authorized to
19 be appropriated from the Fund not to exceed
20 \$ per year for fiscal year 1998 and each
21 succeeding fiscal year for payments required by
22 paragraph (1), to remain available until expended.

23 “(3) AMOUNTS OWED.—

24 “(A) DELAY IF FUNDS ARE UNAVAIL-
25 ABLE.—If funds are unavailable in any fiscal

1 year to reimburse all allocation parties pursuant
2 to paragraph (1), the Administrator may delay
3 payment until funds are available.

4 “(B) PRIORITY.—The priority for reim-
5 bursement shall be based on the length of time
6 that has passed since the settlement between
7 the United States and the allocation parties
8 pursuant to subsection (n).

9 “(C) PAYMENT FROM FUNDS MADE AVAIL-
10 ABLE IN SUBSEQUENT FISCAL YEARS.—Any
11 amount due and owing in excess of available ap-
12 propriations in any fiscal year shall be paid
13 from amounts made available in subsequent fis-
14 cal years, along with interest on the unpaid bal-
15 ances at the rate equal to that of the current
16 average market yield on outstanding marketable
17 obligations of the United States with a maturity
18 of 1 year.

19 “(r) ROLE OF FEDERAL AGENCIES.—Federal depart-
20 ments, agencies, or instrumentalities that are identified as
21 potentially responsible parties shall be subject to, and be
22 entitled to the benefits of, the allocation process provided
23 by this section to the same extent as any other party, other
24 than the receipt of orphan share funding under subsection
25 (h).

1 “(s) REPRESENTATIVE OF THE FUND.—The Admin-
2 istrator and the Attorney General shall participate in the
3 allocation proceeding as a representative of the Fund.

4 “(t) ANNUAL REPORT.—The President shall report
5 annually to Congress on the administration of the alloca-
6 tion scheme under this section, and provide information
7 comparing allocation results with actual settlements at
8 multiparty facilities.

9 “(u) SAVINGS PROVISIONS.—(1) Nothing in this sec-
10 tion shall in any way limit or affect the President’s author-
11 ity to exercise the powers conferred by section 103, 104,
12 105, 106, or 122 of this title, or to commence an action
13 against a party where there is a contemporaneous filing
14 of a judicial consent decree resolving that party’s liability;
15 or to file a proof of claim or take other action in a proceed-
16 ing under title 11 of the United States Code.

17 “(2) The procedures established in this section shall
18 not be construed to modify or affect in any way the prin-
19 ciples of retroactive, strict, joint and several liability under
20 this title.

21 “(3) Nothing in this section shall limit or affect—

22 “(A) the Administrator’s obligation to perform
23 an allocation for facilities that have been the subject
24 of partial or expedited settlements;

1 “(B) the ability of a potentially responsible
2 party at a facility to resolve its liability to the Unit-
3 ed States or other parties at any time before initi-
4 ation or completion of the allocation process;

5 “(C) the validity, enforceability, finality, or
6 merits of any judicial or administrative order, judg-
7 ment, or decree that is issued, signed, lodged, or en-
8 tered with respect to liability under this Act or that
9 authorizes modification of any such order, judgment
10 or decree; or

11 “(D) the validity, enforceability, finality or mer-
12 its of any preexisting contract or agreement relating
13 to any allocation of responsibility or any sharing of
14 response costs under this Act.

15 “(v) RESPONSE ACTION CONTRACTOR.—A person
16 who is potentially liable under this Act solely as a response
17 action contractor with respect to a facility in accordance
18 with section 119 shall not be named as an allocation party
19 under this section with respect to that facility.”.

20 **SEC. 204. RECYCLING TRANSACTIONS.**

21 (a) PURPOSES.—The purposes of this section are—

22 (1) to promote the reuse and recycling of scrap
23 material in furtherance of the goals of waste mini-
24 mization and natural resource conservation while
25 protecting human health and the environment;

1 (2) to level the playing field between the use of
2 virgin materials and recycled materials; and

3 (3) to remove the disincentives and impedi-
4 ments to recycling because of potential liability.

5 (b) CLARIFICATION OF LIABILITY UNDER CERCLA
6 FOR RECYCLING TRANSACTIONS.—Title I is amended by
7 adding after section 128 the following new section:

8 **“SEC. 129. RECYCLING TRANSACTIONS.**

9 “(a) LIABILITY CLARIFICATION.—As provided in
10 subsections (b), (c), (d) and (e), a person who arranged
11 for the recycling of recyclable material shall not be liable
12 under section 107(a)(3) or 107(a)(4).

13 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
14 poses of this section, the term ‘recyclable material’ means
15 scrap paper, scrap plastic, scrap glass, scrap textiles,
16 scrap rubber (other than whole tires), scrap metal, or
17 spent lead-acid, spent nickel-cadmium and other spent
18 batteries, as well as minor amounts of material incident
19 to or adhering to the scrap material as a result of its nor-
20 mal and customary use prior to becoming scrap.

21 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
22 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
23 involving scrap paper, scrap plastic, scrap glass, scrap tex-
24 tiles, or scrap rubber (other than whole tires) shall be
25 deemed to be arranging for recycling if the person who

1 arranged for the transaction (by selling recyclable material
2 or otherwise arranging for the recycling of recyclable ma-
3 terial) can demonstrate by a preponderance of the evi-
4 dence that all of the following criteria were met at the
5 time of the transaction:

6 “(1) The recyclable material met a commercial
7 specification grade.

8 “(2) A market existed for the recyclable mate-
9 rial.

10 “(3) A substantial portion of the recyclable ma-
11 terial was made available for use as a feedstock for
12 the manufacture of a new saleable product.

13 “(4) The recyclable material could have been a
14 replacement or substitute for a virgin raw material,
15 or the product to be made from the recyclable mate-
16 rial could have been a replacement or substitute for
17 a product made, in whole or in part, from a virgin
18 raw material.

19 “(5) For transactions occurring 90 days or
20 more after the date of enactment of this section, the
21 person exercised reasonable care to determine that
22 the facility where the recyclable material would be
23 handled, processed, reclaimed, or otherwise managed
24 by another person (hereinafter in this section re-
25 ferred to as a ‘consuming facility’) was in compli-

1 ance with substantive (not procedural or administra-
2 tive) provisions of any Federal, State, or local envi-
3 ronmental law or regulation, or compliance order or
4 decree issued pursuant thereto, applicable to the
5 handling, processing, reclamation, storage, or other
6 management activities associated with the recyclable
7 material.

8 “(6) For purposes of this subsection, ‘reason-
9 able care’ shall be determined using criteria that in-
10 clude (but are not limited to) (A) the price paid in
11 the recycling transaction; (B) the ability of the per-
12 son to detect the nature of the consuming facility’s
13 operations concerning its handling, processing, rec-
14 lamation, or other management activities associated
15 with the recyclable material; and (C) the result of
16 inquiries made to the appropriate Federal, State, or
17 local environmental agency (or agencies) regarding
18 the consuming facility’s past and current compliance
19 with substantive (not procedural or administrative)
20 provisions of any Federal, State, or local environ-
21 mental law or regulation, or compliance order or de-
22 cree issued pursuant thereto, applicable to the han-
23 dling, processing, reclamation, storage, or other
24 management activities associated with the recyclable
25 material. For the purposes of this paragraph, a re-

1 requirement to obtain a permit applicable to the han-
2 dling, processing, reclamation, or other management
3 activity associated with the recyclable materials shall
4 be deemed to be a substantive provision.

5 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

6 “(1) Transactions involving scrap metal shall be
7 deemed to be arranging for recycling if the person
8 who arranged for the transaction (by selling recycla-
9 ble material or otherwise arranging for the recycling
10 of recyclable material) can demonstrate by a prepon-
11 derance of the evidence that at the time of the
12 transaction—

13 “(A) the person met the criteria set forth
14 in subsection (c) with respect to the scrap
15 metal;

16 “(B) the person was in compliance with
17 any applicable regulations or standards regard-
18 ing the storage, transport, management, or
19 other activities associated with the recycling of
20 scrap metal that the Administrator promulgates
21 under the Solid Waste Disposal Act subsequent
22 to the enactment of this section and with re-
23 gard to transactions occurring after the effec-
24 tive date of such regulations or standards; and

1 “(C) the person did not melt the scrap
2 metal prior to the transaction.

3 “(2) For purposes of paragraph (1)(C), melting
4 of scrap metal does not include the thermal separa-
5 tion of 2 or more materials due to differences in
6 their melting points (referred to as ‘sweating’).

7 “(3) For the purposes of this subsection, the
8 term ‘scrap metal’ means bits and pieces of metal
9 parts (e.g. bars, turnings, rods, sheets, wire) or
10 metal pieces that may be combined together with
11 bolts or soldering (e.g. radiators, scrap automobiles,
12 railroad box cars), which when worn or superfluous
13 can be recycled, except for scrap metals that the Ad-
14 ministrator excludes from this definition by regula-
15 tion and steel shipping containers of a capacity from
16 30 liters to and including 3,000 liters, whether in-
17 tact or not, having any hazardous substance (but
18 not metal bits or pieces) contained in or adhering
19 thereto.

20 “(e) TRANSACTIONS INVOLVING BATTERIES.—(1)
21 Transactions involving spent lead-acid batteries, spent
22 nickel-cadmium batteries or other spent batteries shall be
23 deemed to be arranging for recycling if the person who
24 arranged for the transaction (by selling recyclable material
25 or otherwise arranging for the recycling of recyclable ma-

1 terial) can demonstrate by a preponderance of the evi-
2 dence that at the time of the transaction—

3 “(A) the person met the criteria set forth in
4 subsection (c) with respect to the spent lead-acid
5 batteries, spent nickel-cadmium batteries, or other
6 spent batteries but did not recover the valuable com-
7 ponents of such batteries; and

8 “(B)(i) with respect to transactions involving
9 lead-acid batteries, the person was in compliance
10 with applicable Federal environmental regulations or
11 standards, and any amendments thereto, regarding
12 the storage, transport, management, or other activi-
13 ties associated with the recycling of spent lead-acid
14 batteries;

15 “(ii) with respect to transactions involving nick-
16 el-cadmium batteries, Federal environmental regula-
17 tions or standards are in effect regarding the stor-
18 age, transport, management, or other activities asso-
19 ciated with the recycling of spent nickel-cadmium
20 batteries, and the person was in compliance with ap-
21 plicable regulations or standards or any amendments
22 thereto; or

23 “(iii) with respect to transactions involving
24 other spent batteries, Federal environmental regula-
25 tions or standards are in effect regarding the stor-

1 age, transport, management, or other activities asso-
2 ciated with the recycling of such batteries, and the
3 person was in compliance with applicable regulations
4 or standards or any amendments thereto.

5 “(2) For purposes of paragraph (1)(A) of this sub-
6 section, a person who, by contract, arranges or pays for
7 processing of batteries by an unrelated third person and
8 receives from such third person materials reclaimed from
9 such batteries shall not thereby be deemed to recover the
10 valuable components of such batteries, provided, however,
11 that (A) for transactions occurring more than 90 days
12 after the date of enactment of the Superfund Cleanup Ac-
13 celeration and Liability Equity Act, such person exercised
14 due diligence in determining that such third person was
15 in compliance with all Federal, State, and local environ-
16 mental laws and regulations applicable to the storage,
17 transport, management, or other activities associated with
18 the recycling of spent batteries; and (B) such person had
19 no knowledge or reason to know of the release or threat-
20 ened release.

21 “(f) EXCLUSIONS.—(1) The exemptions set forth in
22 subsections (c), (d), and (e) shall not apply if—

23 “(A) the person had an objectively reasonable
24 basis to believe at the time of the recycling trans-
25 action—

1 “(i) that the recyclable material would not
2 be recycled,

3 “(ii) that the recyclable material would be
4 burned as fuel, or for energy recovery or incin-
5 eration, or

6 “(iii) for transactions occurring before 90
7 days after the date of the enactment of this sec-
8 tion, that the consuming facility was not in
9 compliance with a substantive (not a procedural
10 or administrative) provision of any Federal,
11 State, or local environmental law or regulation,
12 or compliance order or decree issued pursuant
13 thereto, applicable to the handling, processing,
14 reclamation, or other management activities as-
15 sociated with the recyclable material; or

16 “(B) the person added hazardous substances to
17 the recyclable material for purposes other than proc-
18 essing for recycling; or

19 “(C) the person failed to exercise reasonable
20 care with respect to the management and handling
21 of the recyclable material.

22 “(2) For purposes of this subsection, an objectively
23 reasonable basis for belief shall be determined using cri-
24 teria that include (but are not limited to) the size of the
25 person’s business, customary industry practices, the price

1 paid in the recycling transaction, and the ability of the
2 person to detect the nature of the consuming facility's op-
3 erations concerning its handling, processing, reclamation
4 or other management activities associated with the recy-
5 clable material.

6 “(3) For purposes of this subsection, a requirement
7 to obtain a permit applicable to the handling, processing,
8 reclamation, or other management activities associated
9 with recyclable material shall be deemed to be a sub-
10 stantive provision.

11 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
12 this section shall be deemed to affect the liability of a per-
13 son under paragraph (1) or (2) of section 107(a).

14 “(h) PCBs.—An exemption under this section does
15 not apply if the recyclable material contained poly-
16 chlorinated biphenyls in excess of 50 parts per million or
17 any new standard promulgated pursuant to applicable
18 Federal laws.

19 “(i) REGULATIONS.—The Administrator has the au-
20 thority, under section 115, to promulgate additional regu-
21 lations concerning this section.

22 “(j) EFFECT ON PENDING OR CONCLUDED AC-
23 TIONS.—The exemptions provided in this section shall not
24 affect any concluded judicial or administrative action or

1 any pending judicial action initiated by the United States
2 prior to enactment of this section.

3 “(k) LIABILITY FOR ATTORNEY’S FEES FOR CER-
4 TAIN ACTIONS.—Any person who commences an action for
5 contribution against a person who is not liable by oper-
6 ation of this section shall be liable to that person for all
7 reasonable costs of defending that action, including all
8 reasonable attorney’s and expert witness fees.

9 “(l) RELATIONSHIP TO LIABILITY UNDER OTHER
10 LAWS.—Nothing in this section shall affect—

11 “(1) liability under any other Federal, State, or
12 local statute or regulation promulgated pursuant to
13 any such statute, including any requirements pro-
14 mulgated by the Administrator under the Solid
15 Waste Disposal Act; or

16 “(2) the ability of the Administrator to promul-
17 gate regulations under any other statute, including
18 the Solid Waste Disposal Act.”.

19 **SEC. 205. RESPONSE ACTION CONTRACTORS INDEMNIFICA-**
20 **TION.**

21 (a) CLARIFICATION OF RESPONSE ACTION CONTRAC-
22 TOR LIABILITY.—Section 119(a) (42 U.S.C. 9619(a)) is
23 amended by inserting after paragraph (4) the following
24 new paragraph:

1 “(5) LIABILITY.—Any liability of a person
2 under this Act as a response action contractor arising
3 solely from the performance by such person of
4 a response action contract at any facility shall be determined
5 solely in accordance with this section with
6 respect to such facility.”.

7 (b) IMPLEMENTATION OF ALTERNATIVE OR INNOVATIVE
8 TECHNOLOGIES.—Section 119(a) (42 U.S.C.
9 9619(a)) is further amended by adding at the end the following:
10

11 “(6) IMPLEMENTATION OF ALTERNATIVE OR
12 INNOVATIVE TECHNOLOGIES.—No response action
13 contractor shall be liable under this Act solely as a
14 result of such contractor’s testing or implementation
15 of alternative or innovative treatment technologies
16 (as defined in section 311(b)) or alternative or innovative
17 containment technologies with respect to a response
18 action if use of the technology in connection
19 with the response action has been approved by the
20 authorized Federal regulatory agency or State regulatory
21 agency acting under a contract or cooperative
22 agreement with the Administrator pursuant to section
23 127. This paragraph shall not apply in the case
24 of negligence, gross negligence, or intentional misconduct
25 by such contractor in implementing the ap-

1 proved technology, including any noncompliance with
2 the approved process for implementing the tech-
3 nology.”.

4 (c) INDEMNIFICATION CLARIFICATION.—Section
5 119(c)(1) (42 U.S.C. 9619(c)(1)) is amended by inserting
6 “under Federal, State, or common law” after “any liabil-
7 ity”.

8 (d) INDEMNIFICATION FOR THREATENED RE-
9 LEASES.—Section 119(c)(5)(A) (42 U.S.C.
10 9619(c)(5)(A)) is amended by inserting “or threatened re-
11 lease” after “release” each place it appears.

12 (e) CONSIDERATIONS.—Section 119(c) (42 U.S.C.
13 9619(c)) is amended by redesignating paragraphs (5), (6),
14 (7), and (8) as paragraphs (6), (7), (8), and (9), respec-
15 tively, and by inserting after paragraph (4) the following
16 new paragraph:

17 “(5) CONSIDERATIONS.—In exercising the
18 President’s discretion under this subsection whether
19 to provide an indemnification agreement, the Presi-
20 dent should consider the adequacy of competition in
21 response to solicitations, the availability of adequate
22 insurance at a fair and reasonable price (including
23 consideration of premium, policy terms, deductibles,
24 policy coverage, limits, and renewal terms), applica-
25 ble statutes of limitation that may apply to actions

1 against response action contractors, and any other
2 factors the President considers relevant.”.

3 (f) EXTENSION.—Section 119 (42 U.S.C. 9619) is
4 amended—

5 (1) in subsection (e)(2)(C) by striking “1996”
6 and inserting “2000”; and

7 (2) in subsection (g)(5) by striking “1995” and
8 inserting “1999”.

9 **TITLE III—COMMUNITY PARTICI-**
10 **PATION AND HUMAN HEALTH**
11 **Subtitle A—Community**
12 **Participation**

13 **SEC. 301. DEFINITIONS.**

14 Section 117 (42 U.S.C. 9617) is amended by adding
15 the following at the end thereof:

16 “(f) DEFINITIONS.—

17 “(1) COVERED FACILITY.—The term ‘covered
18 facility’ means a facility—

19 “(A) that has been listed or proposed for
20 listing on the National Priorities List; or

21 “(B) at which the Administrator is under-
22 taking an action anticipated to exceed 1 year or
23 the funding limit under section 104 of this Act
24 is anticipated to be reached.

1 “(2) AFFECTED COMMUNITY.—The term ‘af-
2 fected community’ means any group of 2 or more in-
3 dividuals (including representatives of Indian tribes)
4 which may be affected by the release or threatened
5 release of hazardous substances, pollutants, or con-
6 taminants at a covered facility.”.

7 **SEC. 302. PUBLIC PARTICIPATION.**

8 (a) TAG GRANTS.—Section 117(e) (42 U.S.C.
9 9617(e)) is amended to read as follows:

10 “(e) GRANTS FOR TECHNICAL ASSISTANCE.—

11 “(1) AUTHORITY.—In accordance with the rules
12 promulgated by the Administrator, the Adminis-
13 trator may make grants available to any Community
14 Advisory Group or affected community. Such grants
15 shall be known as Technical Assistance Grants
16 (‘TAGs’).

17 “(2) SPECIAL RULES.—No matching contribu-
18 tion shall be required for a Technical Assistance
19 Grant. The Administrator may make the lesser of
20 \$5,000 or 10 percent of the total grant amount
21 available to the grant recipient, in advance of the ex-
22 penditures to be covered by the grant.

23 “(3) GRANT AVAILABILITY.—The Administrator
24 shall promptly notify residents and Indian tribes liv-

1 ing near a covered facility that a technical assistance
2 grant is available under this section.

3 “(4) NUMBER OF TAGS PER FACILITY.—Except
4 as provided in this paragraph, not more than one
5 grant may be made at a time under this subsection
6 with respect to a single covered facility, but the
7 grant may be renewed to facilitate public participa-
8 tion at all stages of response action. Limits shall be
9 established with respect to the number of years for
10 which grants may be available based on the dura-
11 tion, type, and extent of response activity at a facil-
12 ity. The Administrator may provide more than one
13 grant under this subsection with respect to a single
14 covered facility, considering such factors as the area
15 affected by the facility and the distances between af-
16 fected communities.

17 “(5) FUNDING AMOUNT.—The initial amount of
18 any grant under this subsection may not exceed
19 \$50,000 for a single grant recipient. Except that,
20 the Administrator may increase the amount of the
21 grant if the grant recipient demonstrates that the
22 covered facility’s characteristics indicate additional
23 funds are necessary due to the complexity of the re-
24 sponse action, including the size and complexity of
25 the facility, or nature or volume of site-related infor-

1 mation. In addition, the Administrator must find
2 that the grant recipient's management of a previous
3 grant award, if any, was satisfactory, and the costs
4 incurred under the award are allowable and reason-
5 able.

6 “(6) SIMPLIFICATION.—To ensure that the ap-
7 plication process is accessible to all affected citizens,
8 the Administrator shall review the existing guide-
9 lines and application procedures for the TAG grants
10 and, within 180 days after the enactment of this
11 section, revise, as appropriate, such guidelines and
12 procedures to simplify the process of obtaining such
13 grants.

14 “(7) AUTHORIZED GRANT ACTIVITIES.—

15 “(A) INTERPRETATION OF INFORMA-
16 TION.—Grants awarded under this subsection
17 may be used to obtain technical assistance in
18 interpreting information and providing input
19 with regard to (i) the nature of the hazard at
20 a facility; (ii) sampling and monitoring plans,
21 (iii) the remedial investigation and feasibility
22 study; (iv) the record of decision; (v) the selec-
23 tion, design, and construction of the remedial
24 action; (vi) operation and maintenance; (vii) re-

1 moval activities at such facility; or (viii) health
2 assessment or related health activity.

3 “(B) ADDITIONAL ACTIVITIES.—Grants
4 awarded under this section also may be used (i)
5 to obtain technical assistance in interpreting in-
6 formation used to rank facilities according to
7 the Hazard Ranking System, (ii) to hire health
8 experts to advise affected residents on health
9 assessment and data gathering efforts and re-
10 sponse activities, and on the design of any
11 health studies that a government agency per-
12 forms, (iii) to hire technical experts to file com-
13 ments with governmental agencies and generate
14 other documents as necessary to ensure full
15 participation by the grant recipient, (iv) to pub-
16 lish newsletters or otherwise finance the dis-
17 semination of information to other members of
18 the community, and (v) to evaluate the reliabil-
19 ity of long-term operation and maintenance and
20 institutional controls. In addition, not more
21 than 10 percent of the amount of a technical
22 assistance grant under this section may be used
23 for training, hiring of neutral professionals to
24 facilitate deliberations and consensus efforts or

1 hiring community liaisons to potentially respon-
2 sible parties and government agencies.

3 “(8) NON-SITE-SPECIFIC GRANTS.—In accord-
4 ance with the rules promulgated by the Adminis-
5 trator, the Administrator may make Technical As-
6 sistance Grant funds available to Indian tribes, non-
7 profit organizations, and citizens groups to enhance
8 their participation in rulemaking processes carried
9 out in accordance with this Act. Total funding for
10 all such grants shall not exceed \$100,000.”.

11 (b) IMPROVING CITIZEN AND COMMUNITY PARTICI-
12 PATION.—(1) Such section 117 is amended by redesignat-
13 ing paragraphs (1) and (2) of subsection (a) as subpara-
14 graphs (A) and (B), by striking “under paragraph (1)”
15 in such subsection (a) and inserting “under subparagraph
16 (A)”, by redesignating such subsection (a) as paragraph
17 (4), by redesignating subsections (b) and (c) as para-
18 graphs (6) and (7) of subsection (a), and by inserting the
19 following immediately after the section heading:

20 “(a) IMPROVING CITIZEN AND COMMUNITY PARTICI-
21 PATION IN DECISIONMAKING.—

22 “(1) IN GENERAL.—In order to provide an op-
23 portunity for meaningful public participation in
24 every significant phase of response activities under
25 this Act, the President shall take the actions speci-

1 fied in this subsection. Public meetings required
2 under this subsection shall be designed to obtain in-
3 formation from the community and disseminate in-
4 formation to the community concerning the Presi-
5 dent’s facility activities and pending decisions.

6 “(2) HEALTH ASSESSMENT AND PRELIMINARY
7 ASSESSMENT AND SITE INSPECTION.—The President
8 shall provide the opportunity for public meetings and
9 publish a notice of such meetings before or during
10 performance of the health assessment or related
11 health activity and the preliminary assessment and
12 site inspection, as appropriate. Where the President
13 determines a meeting is not appropriate at the pre-
14 liminary assessment and site inspection stage, the
15 President shall provide adequate public notice of
16 that decision. To the extent practicable, before or
17 during the health assessment or related health activ-
18 ity and site inspection, the President shall solicit and
19 evaluate concerns, interests, and information from
20 the Community Advisory Group, if any, affected In-
21 dian Tribes, the affected community, local govern-
22 ment officials and local health officials. The evalua-
23 tion shall include, as appropriate, face-to-face com-
24 munity surveys to identify the location of private
25 drinking water wells, potential exposure pathways,

1 including historic and current or potential use of
2 water, and other environmental resources in the
3 community; a public meeting; written responses to
4 significant concerns; and other appropriate
5 participatory activities.

6 “(3) REMEDIAL INVESTIGATION AND FEASIBIL-
7 ITY STUDY.—The President shall provide the oppor-
8 tunity for public meetings and publish a notice of
9 such meetings before or during the Remedial Inves-
10 tigation and Feasibility Study (RI/FS). During the
11 remedial investigation and feasibility study, the
12 President shall solicit the views and preferences of
13 the Community Advisory Group, if any, affected In-
14 dian Tribes, the affected community, local govern-
15 ment officials and local health officials on the reme-
16 diation and disposition of hazardous substances, pol-
17 lutants, or contaminants at the facility. Such views
18 and preferences shall be described in the remedial
19 investigation and feasibility study and considered in
20 the screening of remedial alternatives for the facil-
21 ity.”.

22 (2) Such section 117, as amended by this subsection,
23 is amended by adding the following new paragraph after
24 paragraph (4) of subsection (a):

1 “(5) COMPLETION OF WORK PLAN.—The Presi-
2 dent shall provide the opportunity for public meet-
3 ings and publish a notice of such meetings before or
4 during the completion of the work plan for the Re-
5 medial Design and Remedial Action.”.

6 (3) Such section 117, as amended by this subsection,
7 is amended by adding the following new paragraphs after
8 paragraphs (6) and (7):

9 “(8) ALTERNATIVES.—Pursuant to paragraph
10 (4), members of the Community Advisory Group, if
11 any, affected Indian Tribes, the affected community,
12 local government officials and local health officials
13 may propose remedial alternatives to the President,
14 and the President shall consider such alternatives in
15 the same manner as the President considers alter-
16 natives proposed by other parties.

17 “(9) SELECTING APPROPRIATE PROCEDURES.—
18 In determining which of the procedures set forth in
19 paragraph (2) may be appropriate, the Adminis-
20 trator may consult with the Community Advisory
21 Group, if any, affected Indian Tribe, the affected
22 community, local government officials and local
23 health officials.

24 “(10) PROVIDING INFORMATION.—The Presi-
25 dent shall provide information to the Community

1 Advisory Group, if any, affected Indian Tribes, the
2 affected community, local government officials and
3 local health officials throughout all significant
4 phases of the response action at the facility. The
5 President, on a regular basis, shall inform such enti-
6 ties of the progress and substance of technical meet-
7 ings between the lead agency and potentially respon-
8 sible parties regarding a covered facility. The Presi-
9 dent shall notify the Community Advisory Group, if
10 any, affected Indian Tribes, the affected community,
11 local government officials and local health officials
12 concerning—

13 “(A) the schedule for commencement of
14 construction activities at the covered facility
15 and the location and availability of construction
16 plans;

17 “(B) the results of any review under sec-
18 tion 121(c) and any modifications to the cov-
19 ered facility made as a result of the review; and

20 “(C) the execution of and any revisions to
21 institutional controls being used as part of a re-
22 medial action.”.

23 (4) Such section 117 is amended by striking “major”
24 in subsection (d).

1 (5) Such section 117 is amended by adding the fol-
2 lowing new subsection after subsection (a), as amended
3 by this section:

4 “(b) ADDITIONAL PUBLIC INVOLVEMENT REQUIRE-
5 MENTS.—(1) The President shall make records relating to
6 the facility available to the public throughout all phases
7 of response action at the facility. Such information shall
8 be made available to the public for inspection and copying
9 without the need to file a formal request subject to reason-
10 able service charges as appropriate. This paragraph shall
11 not apply to a record that is exempt from disclosure under
12 section 552 of title 5, United States Code, or to any record
13 that is exchanged between parties to a dispute under this
14 Act for the purposes of settling the dispute.

15 “(2) The President, in carrying out responsibilities
16 under this Act, shall ensure that the presentation of infor-
17 mation on risk is unbiased and informative and clearly dis-
18 closes any uncertainties and data gaps.

19 “(3) Notwithstanding any other provision of this sub-
20 section, in the case of a removal action taken in accord-
21 ance with section 104 which is expected to extend beyond
22 180 days, the President shall comply with the require-
23 ments of this section unless the President determines that
24 such compliance presents an imminent and substantial
25 endangerment to human health or the environment.

1 Whenever the planning period for a removal action is ex-
 2 pected to be greater than 180 days, the Administrator
 3 shall provide the Community Advisory Group, if any, af-
 4 fected Indian Tribes, the affected community, local gov-
 5 ernment officials and local health officials with notice of
 6 the anticipated removal action and a public comment pe-
 7 riod of no less than 30 days.”.

8 (6) Such section 117 is amended by adding the fol-
 9 lowing new subsection after subsection (e):

10 “(f) UNDERSTANDABLE PRESENTATION OF MATE-
 11 RIALS.—The President shall ensure that information pre-
 12 pared for distribution to the public under this section shall
 13 be provided or summarized in a manner that may be easily
 14 understood by the community, considering any unique cul-
 15 tural needs of the community, including presentation of
 16 information orally and distribution of information in lan-
 17 guages other than English, as appropriate.”.

18 **SEC. 303. COMMUNITY ADVISORY GROUPS.**

19 Section 117 (42 U.S.C. 9617) is amended by adding
 20 after subsection (h) the following:

21 “(i) COMMUNITY ADVISORY GROUPS.—

22 “(1) CREATION AND RESPONSIBILITIES.—The
 23 President shall provide the opportunity for the es-
 24 tablishment of a representative public forum, known
 25 as a Community Advisory Group (CAG), to achieve

1 direct, regular, and meaningful consultation with all
2 interested parties throughout all stages of a response
3 action whenever—

4 “(A) the President determines such a
5 group will be helpful; or

6 “(B) 10 individuals residing in or at the
7 area in which the facility is located, or 10 per-
8 cent of the population of a locality in which the
9 National Priorities List facility is located,
10 whichever is less, petition for a Community Ad-
11 visory Group to be established.

12 “(2) DUTIES.—Each Community Advisory
13 Group shall provide information and views to the
14 President, and, as appropriate, any or all of the fol-
15 lowing: the Agency for Toxic Substances and Dis-
16 ease Registry, State regulatory agencies, Federal
17 agencies, Federal, State, and tribal natural resource
18 trustees, and potentially responsible parties conduct-
19 ing response actions. The information and views re-
20 ported shall include the various subjects related to
21 facility remediation, including facility health studies,
22 potential remedial alternatives, and selection and im-
23 plementation of remedial and removal actions. The
24 Community Advisory Group shall attempt to achieve
25 consensus among its members before reporting posi-

1 tions to agencies or potentially responsible parties.
2 In cases in which consensus cannot be reached, the
3 Community Advisory Group shall allow the presen-
4 tation of divergent views.

5 “(3) LAND USE RECOMMENDATIONS.—To ob-
6 tain greater community input into and support for
7 remedial decisions affecting future land use, the Ad-
8 ministrator shall consult with the Community Advi-
9 sory Group, if any, affected Indian Tribes, the af-
10 fected community, local government officials and
11 local health officials on a regular basis throughout
12 the remedy selection process regarding the reason-
13 ably anticipated future use of land at the facility
14 and any institutional controls required to assure that
15 land use restrictions remain in effect. The Commu-
16 nity Advisory Group may offer recommendations on
17 the reasonably anticipated future use of land at the
18 facility to the Administrator at any time prior to the
19 selection of a remedy at the facility. The land use
20 recommendation shall consider at a minimum, appli-
21 cable comprehensive land use plans and the other
22 factors for determining future land use set forth in
23 section 121(b)(2)(B).

24 “(4) COMMUNITY ADVISORY GROUP MEM-
25 BERS.—Members shall serve on the Community Ad-

1 visory Group without pay. The President shall pro-
2 vide notice and opportunity to participate on a Com-
3 munity Advisory Group to the affected community,
4 including to persons who are or historically have
5 been disproportionately affected by facility contami-
6 nation in their community. The President shall en-
7 sure that each Community Advisory Group, to the
8 extent practicable, reflects the composition of the
9 community near the facility and the diversity of in-
10 terests. Local residents shall comprise a majority of
11 the total membership of the CAG. At least one per-
12 son in this group shall represent the Technical As-
13 sistance Grant recipient if such a grant has been
14 awarded under subsection (e). To the extent pos-
15 sible, the President shall ensure that members of the
16 following groups are represented on a CAG:

17 “(A) Persons residing or owning residen-
18 tial property near the facility or persons who
19 may be directly affected by the releases from
20 the facility.

21 “(B) Persons who, although not residing
22 or owning property near the facility, may be po-
23 tentially affected by releases from the facility.

24 “(C) Local medical community practicing
25 in the community.

1 “(D) Members of local Indian tribes or In-
2 dian communities.

3 “(E) Local citizen, civic, environmental, or
4 public interest groups with members residing in
5 the community.

6 “(F) Current and former employees of the
7 facility during facility operation.

8 “(G) Local business community.

9 “(5) FACA.—The Federal Advisory Committee
10 Act shall not apply to a CAG established under this
11 Act or ATSDR Community Advisory Panels.

12 “(6) TECHNICAL AND ADMINISTRATIVE SUP-
13 PORT FOR COMMUNITY ADVISORY GROUPS.—The
14 President may provide administrative support for
15 Community Advisory Groups.

16 “(7) ADDITIONAL PARTICIPANTS.—The Admin-
17 istrator of Environmental Protection Agency, the
18 Administrator of the Agency for Toxic Substances
19 and Disease Registry and the State, representatives
20 chosen by the governing body of local Indian tribes
21 or Indian community local governments (which may
22 include pertinent city or county governments, or
23 both), and any other governmental unit which di-
24 rectly regulates land use in the immediate vicinity of
25 the facility, as appropriate; and facility owners and

1 local representatives of the Potentially Responsible
2 Parties (PRPs), who represent, wherever practicable,
3 a balance of PRP interests, may participate in Com-
4 munity Advisory Group meetings to provide informa-
5 tion and technical expertise, but shall not be mem-
6 bers of the Community Advisory Group.

7 “(8) OTHER PUBLIC INVOLVEMENT.—The ex-
8 istence of a Community Advisory Group shall not di-
9 minish any other obligation of the President to con-
10 sider the views of any person in selecting response
11 actions under this Act. Nothing in this section shall
12 affect the status of any Citizen Advisory Group
13 formed before the enactment of this subsection.
14 Nothing in this section shall affect the status, deci-
15 sions, or future formation of any Department of De-
16 fense Restoration Advisory Board, Department of
17 Energy Site Specific Advisory Board, and no Citizen
18 Advisory Group must be established for a facility if
19 any such Board has been established for the facility.

20 “(j) COMMUNITY STUDY.—

21 “(1) REPORT BY THE ADMINISTRATOR.—The
22 Administrator shall prepare and submit to Congress
23 a Community Study two years after the date of en-
24 actment of the Superfund Cleanup Acceleration and
25 Liability Equity Act, shall periodically update the

1 study. The Administrator shall ensure that copies of
2 such studies are made available to the public.

3 “(2) CONTENT OF THE REPORT.—The Admin-
4 istrator’s report shall include an analysis of the
5 speed of listing; the speed and nature of response
6 action; the degree to which public views are reflected
7 in response actions; future land use determinations
8 and use of institutional controls; and the population,
9 race, ethnicity, and income characteristics of each
10 community affected by each facility listed or pro-
11 posed for listing on the National Priorities List.

12 “(3) EVALUATION.—The Administrator shall
13 evaluate the information in the study to determine
14 whether priority setting, response actions, and public
15 participation requirements were conducted in a fair
16 and equitable manner and identify program areas
17 that require improvements or modification.

18 “(4) ACTIONS BASED ON EVALUATION.—The
19 Administrator shall institute the necessary improve-
20 ments or modifications to address any deficiencies
21 identified by the study prepared under this section.”.

22 **SEC. 304. TECHNICAL OUTREACH SERVICES FOR COMMU-**
23 **NITIES.**

24 Section 311(d)(2) (42 U.S.C. 9660(d)(2)) is amended
25 to read as follows:

1 “(2) RESPONSIBILITIES OF CENTERS.—The re-
 2 sponsibilities of a hazardous substance research cen-
 3 ter under this subsection shall include—

4 “(A) the conduct of research and training
 5 relating to the disposal and management of
 6 hazardous substances and publication and dis-
 7 semination of the results of the research; and

8 “(B) the conduct of a program to provide
 9 educational and technical assistance to commu-
 10 nities affected by contamination.”.

11 **SEC. 305. RECRUITMENT AND TRAINING PROGRAM.**

12 Section 117 (42 U.S.C. 9617) is amended by adding
 13 after subsection (j) the following:

14 “(k) RECRUITMENT AND TRAINING PROGRAM.—

15 “(1) IN GENERAL.—The Administrator, in con-
 16 sultation with the National Institute of Environ-
 17 mental Health Studies, shall conduct a program to
 18 assist in the recruitment and training of individuals
 19 in an affected community for employment in re-
 20 sponse activities conducted at the facility concerned.

21 “(2) RECRUITMENT, TRAINING, AND EMPLOY-
 22 MENT.—The Administrator shall encourage a person
 23 conducting a response action under this Act to train
 24 and employ persons from the affected community in
 25 remediation skills.”.

1 **SEC. 306. FACILITY SCORING.**

2 Section 105 (42 U.S.C. 9605) is amended by adding
3 the following at the end thereof:

4 “(h) FACILITY SCORING.—The Administrator shall
5 evaluate areas, such as Indian country or poor rural com-
6 munities that warrant special attention and identify up to
7 5 facilities in each region of the Environmental Protection
8 Agency that are likely to warrant inclusion on the Na-
9 tional Priorities List. These facilities shall be accorded a
10 priority in evaluation for NPL listing and scoring, and
11 shall be evaluated for listing within 2 years after the date
12 of enactment of this subsection.”.

13 **SEC. 307. GRANT PROGRAM.**

14 (a) GRANT PROGRAM.—Title III (42 U.S.C. 9651 et
15 seq.) is amended by inserting after section 311 the follow-
16 ing new section:

17 **“SEC. 311A. GRANT PROGRAM.**

18 “(a) GRANT PURPOSES.—Grants from the Fund for
19 the training and education of workers who are or may be
20 engaged in activities related to hazardous waste removal
21 or containment or emergency response may be made under
22 this section.

23 “(b) ADMINISTRATION.—Grants from the Fund
24 under this section shall be administered by the National
25 Institute of Environmental Health Sciences.

1 “(c) GRANT RECIPIENTS.—Grants from the Fund
 2 shall be awarded to nonprofit organizations which dem-
 3 onstrate experience in implementing and operating worker
 4 health and safety training and education programs and
 5 demonstrate the ability to reach and involve in training
 6 programs target populations of workers who are or may
 7 be engaged in hazardous waste removal or containment
 8 or emergency response operations. Of the amount author-
 9 ized in section 111, 20 percent of the funds shall be allo-
 10 cated to such nonprofit organizations for training of mi-
 11 nority and other community-based workers who are or
 12 may be directly engaged in hazardous waste removal or
 13 containment or emergency response operations.”.

14 (b) AUTHORIZATION OF FUNDS FOR GRANTS.—Sec-
 15 tion 111(c)(12) (42 U.S.C. 9611(c)(12)) is amended by
 16 striking out “do not exceed” and all that follows through
 17 the end of the paragraph and inserting in lieu thereof the
 18 following: “do not exceed \$40,000,000 for each of the fis-
 19 cal years 1999, 2000, 2001, 2002, and 2003.”.

20 **Subtitle B—Human Health**

21 **SEC. 311. DISEASE REGISTRY AND HEALTH CARE PRO-** 22 **VIDERS.**

23 Section 104 (42 U.S.C. 9604) is amended as follows:

24 (1) In subsection (b), by adding the following
 25 new paragraph at the end thereof:

1 “(3) NOTICE TO HEALTH AUTHORITIES.—The Presi-
2 dent shall notify State and local public health authorities
3 and Tribal health officials whenever the President has rea-
4 son to believe that a release of a hazardous substance, pol-
5 lutant, or contaminant has occurred, is occurring, or is
6 about to occur or that there is a threat of such a release.”.

7 (2) In subparagraph (E) of paragraph (1) of
8 subsection (i), by striking “admission to hospitals
9 and other facilities and services operated or provided
10 by the Public Health Service” and inserting “refer-
11 ral to health care providers”.

12 (3) Paragraph (6)(A) of subsection (i) is
13 amended to read as follows:

14 “(A)(i) The Administrator of ATSDR shall perform
15 a health assessment or related health activity (including
16 biomedical testing, clinical evaluations, medical monitor-
17 ing, and referral to accredited health care providers) at
18 a minimum, for each facility listed or proposed for listing
19 on the National Priorities List established under section
20 105, including a facility owned or operated by a depart-
21 ment, agency, or instrumentality of the United States.
22 Such health assessment or related health activity shall be
23 completed for each facility listed or proposed for listing
24 on the National Priorities List not later than 1 year after

1 the date of proposal for inclusion on such list for each
2 facility.

3 “(ii) The Administrator of the Environmental Protec-
4 tion Agency and the Administrator of ATSDR shall de-
5 velop strategies, in consultation with State, Tribal, and
6 local health officials, to obtain relevant on-site and off-
7 site characterization data, taking into account the needs
8 and conditions of the affected community.

9 “(iii) The Administrator of the Environmental Pro-
10 tection Agency shall, to the maximum extent practicable,
11 provide the Administrator of ATSDR with the data and
12 information necessary to make a public health determina-
13 tion in a timely manner to allow the Administrator of
14 ATSDR to complete the assessment.

15 “(iv)(I) If appropriate, the Administrator of ATSDR
16 shall provide recommendations for sampling environ-
17 mental media to the Administrator of the Environmental
18 Protection Agency as soon as practicable after discovering
19 a release or threat of release of a hazardous substance
20 or pollutant or contaminant at a facility.

21 “(II) To the maximum extent practicable, the Admin-
22 istrator of the Environmental Protection Agency shall in-
23 corporate the recommendations into the facility investiga-
24 tion activities.”.

1 (4) Subparagraph (F) of paragraph (6) of sub-
2 section (i) is amended to read as follows:

3 “(F) For the purposes of this subsection and section
4 111(c)(4), the term ‘health assessments’ shall include pre-
5 liminary assessments of the potential risk to human
6 health, including children and other highly susceptible
7 populations, posed by individual sites and facilities, based
8 on such factors as the nature and extent of contamination,
9 the past, present, or future existence of potential pathways
10 of human exposure and the community’s historic exposure
11 to site-related and non-site-related sources (including
12 ground or surface water contamination, air emissions, and
13 food chain contamination), the size and potential suscepti-
14 bility of the community within the likely pathways of expo-
15 sure, the comparison of expected human exposure levels
16 to the short-term and long-term health effects associated
17 with identified hazardous substances and any available
18 recommended exposure or tolerance limits for such haz-
19 ardous substances, and the comparison of existing morbid-
20 ity and mortality data on diseases that may be associated
21 with the observed levels of exposure.”.

22 (5) In paragraph (14) of subsection (i), by
23 striking “distribute to the States, and upon request
24 to medical colleges, physicians, and” and inserting
25 the following: “distribute to the States, including

1 State health departments, Tribal health officials,
2 and upon request to medical colleges, local health
3 departments, medical centers, physicians, nursing in-
4 stitutions, nurses, and”, by inserting “(A)” after
5 “(14)”, and by adding the following at the end
6 thereof:

7 “(B) The Administrator of ATSDR shall also assem-
8 ble, develop, as necessary, and distribute to the general
9 public and to at-risk populations appropriate educational
10 materials and other information on human health effects
11 of hazardous substances.”.

12 **SEC. 312. SUBSTANCE PROFILES.**

13 Section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended
14 as follows:

15 (1) By inserting “(A)” after “(3)”.

16 (2) By redesignating subparagraphs (A), (B),
17 and (C) as clauses (i), (ii), and (iii), respectively.

18 (3) By striking out the matter beginning with
19 “Any toxicological profile or revision thereof” and all
20 that follows through the end of such paragraph and
21 inserting in lieu thereof the following:

22 “(B) Any toxicological profile or revision thereof shall
23 reflect the Administrator of ATSDR’s assessment of all
24 relevant toxicological testing which has been peer re-
25 viewed. The profiles prepared under this paragraph shall

1 be for those substances highest on the list of priorities
2 under paragraph (2) for which profiles have not previously
3 been prepared or for substances not on the listing but
4 which have been found at National Priorities List facilities
5 and non-National Priorities List facilities and which have
6 been determined by ATSDR to be of health concern. Pro-
7 files required under this paragraph shall be revised and
8 republished as appropriate, based on scientific develop-
9 ment. Such profiles shall be provided to the States, includ-
10 ing State health departments, Tribal health officials, and
11 local health departments, and made available to other in-
12 terested parties.”.

13 **SEC. 313. HEALTH STUDIES.**

14 (a) HUMAN HEALTH STUDY.—Subparagraph (A) of
15 section 104(i)(7) (42 U.S.C. 9604(i)(7)) is amended to
16 read as follows: “(A) Whenever in the judgment of the
17 Administrator of ATSDR it is appropriate on the basis
18 of the results of a health assessment or related health ac-
19 tivity indicating a threat of exposure to a hazardous sub-
20 stance at levels exceeding the protective level under the
21 hazard ranking system, the Administrator of ATSDR
22 shall conduct a human health study of exposure or other
23 health effects for selected groups or individuals in order
24 to determine the desirability of conducting full scale epi-

1 demologic or other health studies of the entire exposed
2 population.”.

3 (b) RESEARCH PROGRAM.—Section 104(i)(5)(A) (42
4 U.S.C. 9604(i)(5)(A)) is amended as follows:

5 (1) By inserting after “program of research”
6 the following: “conducted directly or by such means
7 as cooperative agreements and grants with appro-
8 priate public and nonprofit institutions. The pro-
9 gram shall be”.

10 (2) In the last sentence—

11 (A) in clause (iii), by striking “and” at the
12 end;

13 (B) by redesignating clause (iv) as clause
14 (v); and

15 (C) by inserting after clause (iii) the fol-
16 lowing:

17 “(iv) laboratory and other studies that
18 can lead to the development of innovative
19 techniques for predicting organ-specific,
20 tissue-specific, and system-specific acute
21 and chronic toxicity; and”.

22 **SEC. 314. GRANT AWARDS, CONTRACTS, AND COMMUNITY**
23 **ASSISTANCE ACTIVITIES.**

24 Section 104(i)(15) (42 U.S.C. 6904(i)(15)) is amend-
25 ed as follows:

1 (1) By inserting “(A)” before “The activities”.

2 (2) In the first sentence, by striking “coopera-
3 tive agreements with States (or political subdivisions
4 thereof)” and inserting “grants, cooperative agree-
5 ments, or contracts with States (or political subdivi-
6 sions thereof), Indian Tribes, other appropriate pub-
7 lic authorities, public or private institutions, colleges,
8 universities (including historically black colleges and
9 universities)”.

10 (3) By adding at the end the following new sub-
11 paragraph:

12 “(B) The Administrator of the Agency for Toxic Sub-
13 stances and Disease Registry, pursuant to the grants, co-
14 operative agreements and contracts referred to in this
15 paragraph, is authorized to facilitate, where appropriate,
16 the provision of health services to communities affected
17 by the release of hazardous substances. Such health serv-
18 ices may include diagnostic services, testing, health data
19 registries, and preventative public health education.”.

20 **SEC. 315. INDIAN HEALTH PROVISIONS.**

21 Section 104(i) (42 U.S.C. 9406(i)) is amended as fol-
22 lows:

23 (1) In paragraph (1)—

24 (A) by inserting “the Indian Health Serv-
25 ice” after “the Secretary of Transportation”;

1 (B) by inserting “and tribal” after “and
2 local”;

3 (C) in subparagraph (A) by inserting “and
4 Indian tribes” after “the States”; and

5 (D) in subparagraph (C) by inserting “In-
6 dian tribes” after “States,”.

7 (2) In paragraph (4) by—

8 (A) striking “State officials and local offi-
9 cials” and inserting “State, tribal, and local of-
10 ficials”; and

11 (B) inserting in the second sentence “or
12 Indian tribes” after “States”.

13 (3) In paragraph (5)(A) by inserting “and the
14 Indian Health Service” after “Public Health Serv-
15 ice”.

16 (4) In paragraph (6)(C) by inserting “where
17 low population density is not used as an excluding
18 risk factor” after “health appears highest”.

19 (5) In paragraph (6)(E)—

20 (A) by inserting “Indian tribe” after
21 “Any”; and

22 (B) by inserting at the end of the subpara-
23 graph the following: “If the ATSDR or the Ad-
24 ministrator of the Environmental Protection
25 Agency does not act on the recommendations of

1 the State or Indian tribe, then the Administra-
2 tors must respond in writing to the State or
3 tribe why they have not acted on the rec-
4 ommendations.”.

5 (6) In paragraph (6)(F) by striking “and” after
6 “emissions,” and inserting “and any other pathways
7 resulting from subsistence activities” after “contami-
8 nation”.

9 (7) In paragraph (6)(G) by striking the period
10 at the end of the last sentence and inserting the fol-
11 lowing: “and give special consideration, where appro-
12 priate, to any practices of the affected community
13 that may result in increased exposure to hazardous
14 substances, pollutants, or contaminants, such as
15 subsistence hunting, fishing, and gathering.”.

16 (8) In paragraph (10)—

17 (A) by striking “and” at the end of sub-
18 paragraph (D);

19 (B) by striking the period at the end of
20 subparagraph (E) and inserting “; and”; and

21 (C) by inserting after revised subpara-
22 graph (E) the following new subparagraph:

23 “(F) and the health impacts from pollut-
24 ants, contaminants, and hazardous substances
25 on Indian tribes from covered facilities.”.

1 **SEC. 316. PUBLIC HEALTH RECOMMENDATIONS IN REME-**
2 **DIAL ACTIONS.**

3 Section 121(c) (42 U.S.C. 9621(c)) is amended in the
4 first sentence by inserting after “remedial action” the sec-
5 ond time it appears the following: “, including public
6 health recommendations and decisions resulting from ac-
7 tivities under section 104(i),”.

8 **Subtitle C—General Provisions**

9 **SEC. 321. TRANSITION.**

10 (a) **EFFECTIVE DATE.**—Except as provided in sub-
11 section (b), this title and the amendments made by this
12 title shall become effective upon the date of enactment of
13 this Act.

14 (b) **SPECIAL RULE.**—The requirements of para-
15 graphs (2), (3), (5), and (8) of section 117(a) and para-
16 graph (1) of section 117(f) of the Comprehensive Environ-
17 mental Response, Compensation, and Liability Act of
18 1980, as added by sections 301 and 302, shall become ef-
19 fective 180 days after the date of enactment of this Act.

20 **TITLE IV—NATURAL RESOURCE**
21 **DAMAGES**

22 **SEC. 401. USE OF NATURAL RESOURCE DAMAGES FUNDS.**

23 Section 107(f) (42 U.S.C. 9607(f)) is amended—

24 (1) by striking “(f)(1)” and all that follows
25 through the end of paragraph (1) and inserting the
26 following:

1 “(f) USE OF NATURAL RESOURCE DAMAGES
2 FUNDS.—

3 “(1) IN GENERAL.—Sums recovered by the
4 United States Government as trustee under this sub-
5 section shall be retained by the trustee, without fur-
6 ther appropriation, for use only for reasonable res-
7 toration measures for such natural resources. Sums
8 recovered by a State or Indian tribe as trustee under
9 this subsection shall be available for use only for
10 reasonable restoration measures for such natural re-
11 sources by the State or Indian tribe.”; and

12 (2) by indenting the left margins of paragraph
13 (2) so as to be appropriately aligned under para-
14 graph (1).

15 **SEC. 402. LEAD TRUSTEE; BUNDLING OF CLAIMS; POTEN-**
16 **TIALY RESPONSIBLE PARTY STATUS.**

17 Section 107(f)(2) (42 U.S.C. 9607(f)(2)) is amended
18 by adding at the end the following new subparagraph:

19 “(D) LEAD TRUSTEE.—(i) In a case where
20 more than one Federal, State, or tribal trustee has
21 cause to conduct a natural resource damage assess-
22 ment, the trustees shall designate a lead administra-
23 tive trustee at the site. Such designation shall be
24 done not later than 180 days after first notice to the
25 responsible parties that a natural resource damage

1 assessment will be made. Failure by a trustee to
2 participate in the designation of a lead trustee shall
3 preclude the trustee from seeking costs for natural
4 resource damages from a responsible party.

5 “(ii) The lead administrative trustee shall bear
6 the responsibility of coordinating input of other
7 trustees in assessing damages to the natural re-
8 sources and developing and implementing any res-
9 toration plan.

10 “(iii) In the event that a natural resource dam-
11 age assessment results in the filing of a claim under
12 this subsection, such claim will represent the inter-
13 ests of all trustees associated with the assessment.
14 Each trustee shall act as plaintiff for resources iden-
15 tified in the assessment where exclusive ownership or
16 management of such resources can be demonstrated.

17 “(iv) Where a Federal, State, or tribal trustee
18 is a liable party under this section where natural re-
19 sources have been injured, destroyed, or lost, such
20 trustee shall not be designated the lead administra-
21 tive trustee under this subsection.”.

22 **SEC. 403. USE OF MEDIATION.**

23 Section 122(f) (42 U.S.C. 9622(f)) is amended by
24 adding at the end the following new paragraph:

1 “(7) USE OF MEDIATION.—Any Federal natural
 2 resource trustee, State natural resource trustee, or
 3 Indian tribe seeking damages for injury to, destruc-
 4 tion of, or loss of natural resources in accordance
 5 with subsections (a) and (f) of section 107 shall ini-
 6 tiate mediation for such claim with any potentially
 7 responsible parties by means of the mediation proce-
 8 dure or other alternative dispute resolution method
 9 recognized by the district court in which the action
 10 is filed. Such mediation shall be initiated not later
 11 than 120 days after the filing of such action. Such
 12 120-day period may be extended upon agreement of
 13 all parties.”.

14 **SEC. 404. TRANSITION RULES.**

15 The amendments made by this title shall not apply
 16 to any action to recover natural resource damages under
 17 section 107(f) that was filed in the appropriate district
 18 court before October 28, 1997.

19 **SEC. 405. LOST-USE AND NONUSE DAMAGES AND CONTIN-**
 20 **UOUS VALUATION METHODOLOGY.**

21 Section 107(f) (42 U.S.C. 9607(f)) is amended by
 22 adding at the end the following new paragraph:

23 “(3) DAMAGES.—

24 “(A) MEASURE OF DAMAGES.—The meas-
 25 ure of damages in any action under this sub-

section shall be limited to the reasonable costs
of—

“(i) assessing such damages;

“(ii) restoring such resources; and

“(iii) the lost-use of such resources
occurring after December 11, 1980.

“(B) NONUSE VALUES.—There shall be no
recovery under this Act for any impairment of
nonuse values as a separate compensable dam-
age.

“(C) CONTINGENT VALUATION METHODOLOGY.—Contingent valuation methodology and
other economic polling techniques shall not be
used to value either lost natural resource serv-
ices or any particular restoration alternative.”.

SEC. 406. RESTORATION GOAL AND ALTERNATIVES.

Section 107(f) (42 U.S.C. 9607(f)) is further amend-
ed by adding at the end the following new paragraph:

“(4) RESTORATION ALTERNATIVES.—

“(A) GOAL.—An injury to, destruction of,
or loss of natural resources, for the purposes of
evaluating damages and identifying restoration
alternatives under this subsection or section
106, shall mean a measurable adverse change in
a population or community of organisms that

1 exceeds the natural variability of the population
2 or community of organisms to an ecologically
3 significant degree, as a result of a release of a
4 hazardous substance. The goal of any restora-
5 tion shall be to restore injured natural re-
6 sources to their baseline condition for the rea-
7 sonably anticipated use of the natural resources
8 as measured by the consumptive and non-
9 consumptive services provided by such re-
10 sources.

11 “(B) RESTORATION OF SPECIAL RE-
12 SOURCES.—(i) The goal of restoration of a
13 damaged biological resource that is located
14 within a federally designated national park, wil-
15 derness area, or marine sanctuary shall be to
16 return populations of such resource to the base-
17 line condition.

18 “(ii) If a species is listed as threatened or
19 endangered under the Endangered Species Act
20 of 1973 (16 U.S.C. 1531 et seq.), impacts to
21 individual plants or animals shall be considered
22 to be impacts to populations or communities of
23 organisms.

24 “(C) SELECTION OF ALTERNATIVES.—Any
25 Federal natural resource trustee, State natural

1 resource trustee, or Indian tribe selecting a res-
2 toration alternative to attain the goal of this
3 paragraph shall select measures that—

4 “(i) are technically feasible;

5 “(ii) are cost-effective;

6 “(iii) are consistent with response ac-
7 tions; and

8 “(iv) are timely, to the extent consist-
9 ent with clauses (i), (ii), and (iii).

10 “(D) NATURAL RECOVERY.—Natural re-
11 covery shall be considered as a restoration al-
12 ternative on an equal basis with other meas-
13 ures, where natural recovery will result in the
14 restoration of services within a time frame that
15 is reasonable compared to the time by which
16 more active measures would result in attain-
17 ment of the restoration goal in subparagraph
18 (A).

19 “(E) REPLACEMENT.—With the concur-
20 rence of the affected trustees, any restoration
21 alternative selected in accordance with subpara-
22 graph (B) may include temporary or permanent
23 replacement of the services, or some portion
24 thereof, which would otherwise have been pro-
25 vided by the injured natural resources.”.

1 **SEC. 407. DOUBLE RECOVERY.**

2 Section 107(f)(4), as added by section 406, is amend-
3 ed by adding at the end the following new subparagraph:

4 “(F) DOUBLE RECOVERY.—There shall be
5 no double recovery by a Federal, State, or tribal
6 trustee or trustees under this Act or any other
7 law for natural resource damages, including the
8 costs of damage assessment or restoration, re-
9 placement or acquisition for the same injury,
10 destruction, or loss of a natural resource.”.

11 **SEC. 408. CAUSATION.**

12 Section 107(f) (42 U.S.C. 9607(f)) is further amend-
13 ed by adding at the end the following new paragraph:

14 “(5) CAUSATION.—A trustee may recover natu-
15 ral resource damages from a defendant only if the
16 damage assessment demonstrates that the hazardous
17 substance release or releases for which the defendant
18 is legally responsible were a cause of any alleged
19 natural resource injuries that deviate from the base-
20 line condition. For purposes of this paragraph, the
21 term ‘cause’ shall be construed in accordance with
22 the Restatement Second of Torts as in effect on the
23 date of the enactment of this paragraph.”.

24 **SEC. 409. DEFINITIONS.**

25 Section 101 (42 U.S.C. 9601) is amended—

1 (1) in paragraph (21), by striking “or any
2 interstate body” and inserting “Indian tribe, or any
3 interstate body, except that no Indian tribe shall be
4 required to share payment of future operation and
5 maintenance costs associated with a site under sec-
6 tion 104”; and

7 (2) by adding at the end the following new
8 paragraphs:

9 “(39) The term ‘baseline’ means the condition
10 or conditions that would have existed at a natural
11 resource had a release of hazardous substances not
12 occurred.

13 “(40) The term ‘consumptive services’ means
14 the use of a natural resource by the public that in-
15 cludes activities such as fishing and trapping in
16 which resources are harvested.

17 “(41) The term ‘nonconsumptive services’
18 means the physical use of the resource by the public
19 in a manner that does not reduce the stock of the
20 resource. Such uses include activities related to visi-
21 tation, such as hiking, wildlife viewing, and photog-
22 raphy, as well as ecological services such as flood
23 control and filtration.”.

TITLE V—STATE ROLE

SEC. 501. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.

Title I is amended by adding after section 129 the following new section:

“SEC. 130. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.

“(a) IN GENERAL.—

“(1) APPLICATION FOR AUTHORITY TO TAKE PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A State may apply to the Administrator to take or require preremedial actions (including removal actions) under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is not listed on the National Priorities List (NPL).

“(2) APPLICATION FOR AUTHORITY TO TAKE RESPONSE ACTION AT NPL FACILITIES.—A State may apply to the Administrator to take or require response actions, including selection and enforcement of remedial actions and use of allocation procedures under section 128, under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the

1 boundaries of the State that is listed on the National
2 Priorities List (NPL) or to take or require removal
3 actions at any facility proposed for listing on the
4 National Priorities List.

5 “(3) APPROVAL OF APPLICATION.—The Admin-
6 istrator shall enter into a contract or cooperative
7 agreement under this section if the Administrator
8 determines that the State—

9 “(A) meets the qualification requirements
10 set forth in the regulations promulgated pursu-
11 ant to subsection (b); and

12 “(B) with respect to authority to select re-
13 medial actions and use allocation procedures,
14 meets the qualification requirements set forth
15 in subsection (c).

16 “(b) REGULATIONS.—The Administrator, in con-
17 sultation with the States, shall promulgate regulations to
18 implement this section. The regulations shall provide such
19 additional qualifications for a contract or cooperative
20 agreement under this section as the Administrator consid-
21 ers reasonable, including qualifications applicable to par-
22 ticular types of preremedial or response actions. The regu-
23 lations shall include a requirement that, in order for a
24 State to qualify for a contract or cooperative agreement
25 with respect to a facility under this section, the State may

1 not be a major potentially responsible party with respect
2 to that facility.

3 “(c) QUALIFICATION REQUIREMENTS WITH RE-
4 SPECT TO SELECTION OF REMEDIAL ACTION AND USE
5 OF ALLOCATION PROCEDURES.—For purposes of sub-
6 section (a)(3)(B), with respect to a contract or cooperative
7 agreement under this section for authority to select reme-
8 dial action or to use the allocation procedures under sec-
9 tion 128, the Administrator also shall make each of the
10 following determinations:

11 “(1) The State has the capability to select re-
12 medial actions or to use the allocation procedures
13 under section 128, including adequate legal author-
14 ity, financial and personnel resources, organization,
15 and expertise.

16 “(2) The State meets any other qualifications
17 set forth in the regulations promulgated under sub-
18 section (b) for selecting remedial actions or using
19 the allocation procedures.

20 “(3) The State demonstrates a historical record
21 of performing similar response actions.

22 “(d) REQUIREMENTS FOR SELECTION OF REMEDIAL
23 ACTION.—In any contract or cooperative agreement that
24 allows a State to select remedial actions, the State shall
25 agree to select such remedial actions in accordance with

1 all of the procedures and requirements set forth in sec-
2 tions 117 and 121 of this Act, the National Contingency
3 Plan, and any other relevant regulations and guidelines
4 adopted by the Administrator.

5 “(e) STATE AUTHORITY REGARDING ENFORCEMENT
6 OF SELECTED REMEDIAL ACTION.—(1) A State that se-
7 lects a remedial action pursuant to a contract or coopera-
8 tive agreement entered into under subsection (a) shall
9 have the authority to enforce the requirements of such re-
10 medial action pursuant to section 121(f)(4).

11 “(2) Such State also shall have the authority to en-
12 force compliance with any standard, regulation, condition,
13 requirement, order, or final determination of the State
14 with respect to the remedial action. Such State also may
15 seek civil penalties not to exceed \$25,000 per day for any
16 violation of such standard, regulation, condition, require-
17 ment, order, or final determination. Such State may com-
18 mence an action seeking such relief unless the standard,
19 regulation, condition, requirement, order, or final deter-
20 mination is arbitrary, capricious, or contrary to law when
21 reviewed upon the administrative record presented by the
22 State.

23 “(3) In addition, if expressly provided in the contract
24 or cooperative agreement, such State may waive a Federal

1 requirement applicable to the remedial action in accord-
2 ance with section 121.

3 “(f) REQUIREMENTS FOR ENFORCEMENT AND ALLO-
4 CATION.—

5 “(1) ENFORCEMENT.—In the case of a contract
6 or cooperative agreement providing for a State to
7 initiate an enforcement action with respect to a facil-
8 ity for purposes of recovering costs or compelling
9 performance of a remedy at the facility, the contract
10 or cooperative agreement shall require the State to
11 provide for expedited settlements under section 122.

12 “(2) USE OF ALLOCATION PROCEDURES.—(A)
13 In the case of a contract or cooperative agreement
14 providing for a State to initiate an enforcement ac-
15 tion with respect to a facility subject to mandatory
16 allocation pursuant to section 128(a)(1), the con-
17 tract or cooperative agreement shall require the
18 State to use allocation procedures with respect to
19 the facility. The contract or cooperative agreement
20 shall require the State to initiate the allocation proc-
21 ess by certifying each of the following:

22 “(i) The State has completed a potentially
23 responsible party search substantially consistent
24 with subsection (c) of section 128 and will make

1 the results of that search available to the allo-
2 cator and the parties.

3 “(ii) The State has notified Federal, State,
4 and tribal natural resource trustees of the com-
5 mencement of the allocation process and, pursu-
6 ant to section 104(b)(2), of potential damages
7 to natural resources.

8 “(iii) The facility would be subject to man-
9 datory allocation under section 128(a)(1) if the
10 President were conducting the response action.

11 “(B) After the State has made a certification
12 under subparagraph (A), the Administrator shall ini-
13 tiate an allocation in accordance with the terms of
14 section 128. The Administrator may assign to the
15 State, by cooperative agreement or otherwise, any
16 responsibilities to conduct the allocation, except that
17 the Administrator and Attorney General shall retain
18 their authority relating to orphan share funding as
19 provided by this paragraph and in section 128, in-
20 cluding the timing and terms of payment.

21 “(C) The State may accept or reject the alloca-
22 tion report on the same basis as provided in section
23 128(l). If the State does not reject the allocation, it
24 shall use the allocator’s report as the basis of State
25 settlements. The State may recover the costs of the

1 allocation pursuant to State law or the provisions of
2 this Act.

3 “(D) The President, through either the Admin-
4 istrator or the Attorney General, or both, may par-
5 ticipate in any phase of an allocation proceeding
6 where an orphan share is identified according to the
7 factors set forth in section 128.

8 “(E) If the State accepts an allocation report
9 as the basis for its settlements, and the allocation
10 report identifies an orphan share subject to Federal
11 funding, the State shall apply for such funding by
12 certifying each of the following to the Administrator
13 and the Attorney General:

14 “(i) The allocation presents a reasonable
15 basis for resolving responsibility for the facility.

16 “(ii) The assignment of an orphan share
17 shall be in accordance with section 128.

18 “(F) The Administrator and the Attorney Gen-
19 eral shall accept a State’s request for orphan share
20 funding supported by an allocation report and the
21 certification described in subparagraph (E), unless
22 the Administrator and Attorney General determine,
23 within 120 days after the request by the State, that
24 the allocation does not meet the standards set forth
25 in section 128. Such determination shall be made in

1 the same manner, and shall be subject to the same
2 limitations, as set forth in section 128.

3 “(G) The contract or cooperative agreement
4 shall provide the following:

5 “(i) The Administrator may deduct from
6 orphan share funding the costs incurred in con-
7 ducting the allocation.

8 “(ii) The State may use the orphan share
9 funding only to fund response actions through
10 settlement or to reimburse parties performing
11 work in excess of the share assigned to them in
12 allocation. No such reimbursement may exceed
13 the reimbursement level available under section
14 128.

15 “(H) The State may recover funds provided
16 through orphan share funding from nonsettling re-
17 sponsible parties pursuant to State law or the provi-
18 sions of this Act. Seventy-five percent of such recov-
19 eries shall be returned to the Fund. The remaining
20 25 percent shall be used for any other response ac-
21 tion by the recovering State.

22 “(3) COVENANTS.—(A) In a case in which ei-
23 ther the President, acting under the authority of this
24 Act, or a State, acting pursuant to a contract or co-
25 operative agreement under this section, has respon-

1 sibility for selecting a response action at a facility
2 listed or proposed for listing on the National Prior-
3 ities List and enters an administrative or judicial
4 settlement to resolve the liability of responsible par-
5 ties at the facility, the President or the State may
6 confer, in accordance with requirements relating to
7 covenants of sections 122 and 128, a covenant that
8 will preclude some or all administrative or judicial
9 action by both the President and the State to re-
10 cover response costs or to compel response actions at
11 the facility with respect to matters addressed in the
12 settlement, except that such covenants shall not be
13 binding on the governmental entity that did not con-
14 fer the covenant to the extent that—

15 “(i) the covenant purports to address natu-
16 ral resource damages; or

17 “(ii) the President or the State has not
18 been provided notice of, and an opportunity to
19 participate in, the settlement concerning the re-
20 sponse action; or

21 “(iii) the President or the State objects to
22 the settlement within 120 days of the date of
23 signature for the record of decision or receipt of
24 notice of the settlement, whichever is later.

1 “(B) The covenants described by this para-
2 graph may be conferred by either the Administrator
3 or the State with respect to a facility owned or oper-
4 ated by any department, agency, or instrumentality
5 of the United States (including the executive, legisla-
6 tive, and judicial branches of government). The Ad-
7 ministrator may confer a covenant in an administra-
8 tive order, consent decree, or an interagency agree-
9 ment. The State may confer a covenant in an ad-
10 ministrative order or a consent decree.

11 “(g) TERMS AND CONDITIONS; ENFORCEMENT.—

12 “(1) IN GENERAL.—A contract or cooperative
13 agreement under this section shall be subject to such
14 terms and conditions as the Administrator may pre-
15 scribe. If a State fails to comply with a requirement
16 of a contract or cooperative agreement, the Adminis-
17 trator, after 90 days notice to the affected State,
18 may seek in the appropriate United States district
19 court to ensure performance of the response action,
20 or to recover any funds advanced or any costs in-
21 curred because of the breach.

22 “(2) SPECIFIC TERMS.—A contract or coopera-
23 tive agreement under this section shall include the
24 following requirements:

1 “(A) A requirement that the State shall
2 exercise any authority conferred by this section
3 or the contract or cooperative agreement on be-
4 half of the State, and not on behalf of or in the
5 name of the Administrator, the President, or
6 the United States.

7 “(B) A requirement that the State have
8 and maintain sufficient legal authority under
9 applicable State law to enter into the contract
10 or cooperative agreement.

11 “(C) A requirement that the Administrator
12 retain authority to terminate and recoup fund-
13 ing, and to terminate the contract or coopera-
14 tive agreement, if the State fails to perform the
15 contract or cooperative agreement in a manner
16 consistent with this Act. At least 90 days before
17 terminating any contract or cooperative agree-
18 ment with a State, the Administrator shall pro-
19 vide to the State a written explanation of the
20 reasons for the proposed termination and afford
21 an opportunity to the State to discuss the ter-
22 mination and to propose actions to correct any
23 deficiencies.

24 “(D) A requirement imposing a non-
25 discretionary duty on the Administrator to per-

1 form or compel expeditious performance of re-
2 sponse actions under the contract or cooperative
3 agreement if the State fails to comply with the
4 terms of the contract or cooperative agreement.

5 “(h) SAVINGS CLAUSE.—Nothing in this section shall
6 affect the exercise by a State of any other authorities that
7 may be applicable to facilities in such State.”.

8 **SEC. 502. STATE COST SHARE.**

9 Section 104(c) is amended by adding at the end the
10 following new paragraphs:

11 “(10) EXISTING CONTRACTS AND COOPERATIVE
12 AGREEMENTS.—The requirements of paragraphs (3), (6),
13 and (7) of this subsection shall apply only to contracts
14 and cooperative agreements pursuant to section 104(d)
15 entered into prior to the enactment of the Superfund
16 Cleanup Acceleration and Liability Equity Act.

17 “(11) STATE COST SHARE.—After the date of enact-
18 ment of the Superfund Cleanup Acceleration and Liability
19 Equity Act, the Administrator shall not provide any fund-
20 ing under this subsection or section 127, or any response
21 action pursuant to this section, except for emergency re-
22 moval actions, unless the State in which the release or
23 threatened release occurs has entered into a contract or
24 cooperative agreement pursuant to this subsection or sec-

tion 127 that provides assurances, deemed adequate by the Administrator, that—

“(A) the State will pay or assure payment of 10 percent of the cost of such response action or funding, including 10 percent of orphan share funding and operation and maintenance costs; and

“(B) the State will assure oversight of any operation and maintenance of funded response actions.”.

TITLE VI—GENERAL PROVISIONS

SEC. 601. DEFINITIONS.

Section 101 (42 U.S.C. 9601), as amended by section 409, is further amended by adding at the end the following:

“(41) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ means all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal

1 solid waste collection services, and, regardless of
2 when generated, would be considered conditionally
3 exempt small quantity generator waste under regula-
4 tion issued pursuant to section 3001(d) of the Solid
5 Waste Disposal Act (42 U.S.C. 6921(d)). Examples
6 of municipal solid waste include food and yard
7 waste, paper, clothing, appliances, consumer product
8 packaging, disposable diapers, office supplies, cos-
9 metics, glass and metal food containers, elementary
10 or secondary school science laboratory waste, and
11 household hazardous waste. The term does not in-
12 clude combustion ash generated by resource recovery
13 facilities or municipal incinerators, or waste from
14 manufacturing or processing (including pollution
15 control) operations not essentially the same as waste
16 normally generated by households.”.

17 **SEC. 602. APPROVAL OF GOVERNOR NOT REQUIRED BE-**
18 **FORE LISTING OF FACILITY ON NATIONAL**
19 **PRIORITIES LIST.**

20 Section 105(a)(8)(B) (42 U.S.C. 9605(a)(8)(B)) is
21 amended by inserting after “consider any priorities estab-
22 lished by the States” the following: “, but the approval
23 of a Governor of a State is not necessary before the Presi-

- 1 dent lists a facility in that State on the National Priorities
- 2 List”.

